comments on this matter are advised not to disclose sensitive personal data such as social security numbers.

[Insert An Objective Description of the Transaction and the Steps Taken to Correct the Transaction]

Please feel free to contact me if you have any questions at [Insert Telephone Number of a Person Employed by the Applicant Who Is Knowledgeable About this Matter].

Sincerely,

[Insert Name and Title of Person Employed by the Applicant]

[FR Doc. 2025–00328 Filed 1–14–25; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–042–FOR; Docket No. OSM–2023–0007; S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approving, in part.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, in part, and denying, in part, an amendment to the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana submitted this proposed amendment to OSMRE on its own initiative in response to a State law passed by the Montana Legislature (House Bill (HB) 576). The proposed amendment generally concerns proposed changes to the definition of material damage and changes to permit requirements related to hydrologic information.

DATES: The effective date is February 14, 2025.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 261–6550, Email: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with SMCRA and consistent with the Federal implementing regulations. *See* 30 U.S.C. 1253(a)(1) and (7); 30 CFR 730.5 and 732.15(a). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.15.

II. Submission of the Amendment

By letter dated June 1, 2023 (Administrative Record No. MT–042–01), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana's proposed amendment to be administratively complete on June 5, 2023. Montana submitted the proposed amendment to us, on its own volition, after the Montana legislature passed HB 576 during the 2023 legislative session. HB 576 amends the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as well as sections 82–4–203 and 82–4–222 of the Montana Code Annotated (MCA). Among other things, HB 576 also directed the Montana Department of Environmental Quality (MDEQ) to amend the Administrative Rules of Montana (ARM) to ''remove the two subsections defining 'material damage' and the subsection defining 'material damage to the quantity or quality of water'.''

Specifically, Montana proposes several changes to MCA sec. 82–4–203(32), which defines and describes ''material damage'' for both underground and surface coal mining operations (referred to herein as ''coal mining and reclamation operations''). As currently approved by OSMRE, this section dictates how ''material damage'' applies to the protection of the hydrologic balance. Montana now proposes to create three subsections under section 82–4–203(32) to define how ''material damage'' is defined with respect to: (a) protection of the hydrologic balance; (b) an alluvial valley floor; and (c) subsidence caused by an underground coal mining operation.

Proposed section 82–4–203(32)(a) would create two requirements for an action or inaction to be considered ''material damage'' to the hydrologic balance. The first requirement is that the coal mining operation would cause significant, lasting, or permanent adverse changes to water quality or quantity that affect the beneficial uses of, or rights to, the water outside the permit area. This requirement incorporates the current language of section 82–4–203(32) but modifies it to replace the phrase ''degradation or reduction'' with ''significant long term or permanent adverse change.'' The second requirement for an action or inaction to be considered ''material damage'' to the hydrologic balance is that a coal mining or reclamation operation would cause a lasting or permanent exceedance of a water quality standard (WQS) outside a permit area. There is an exception to this second requirement for water bodies for which the WQSs are stricter than the baseline conditions as determined by MDEQ's assessment of the cumulative hydrologic impact findings conducted pursuant to section 82–4–222. For those water bodies, this second requirement is met if the coal mining and reclamation operation causes an adverse effect to land use, beneficial uses of water, or water rights.

Proposed section 82–4–203(32)(b) would apply when determining if an alluvial valley floor is ''materially damaged.'' Montana proposes to modify the definition of ''material damage'' by adding language that accounts for the degradation or a reduction of water quality or quantity supplied to an alluvial valley floor by a coal mining and reclamation operation, but only if those actions or inactions significantly decrease the alluvial valley floor's ability to support agricultural activities.

Proposed section 82–4–203(32)(c) would apply when determining if subsidence caused by underground coal mining operation is ''material damage.'' Subsidence caused by underground coal mines would constitute ''material damage'' when there are (1) significant impairments to surface lands, features, and structures; (2) physical changes that have significant adverse effects on a lands current and reasonably foreseeable uses, production, or income; or (3) when there is any significant change to a structure's pre-subsidence condition, appearance, or utility.

Next, Montana proposes to amend its coal mine operation permit requirements related to hydrologic information by removing two sentences from section 82–4–222(1)(m). The first sentence Montana proposes to remove states that the applicant's determination of the probable hydrologic consequences of a coal mining and reclamation operation is not required until the necessary hydrologic information is made available from an appropriate Federal or State agency. The second sentence that Montana proposes to remove prohibits the MDEQ from approving a coal mining permit application until the necessary hydrologic information is incorporated into the application.

Lastly, HB 576 adds four contingencies to the proposed amendments of sections 82–4–203(32) and 82–4–222(1)(m) that are not codified into the MCA but apply to the sections amended by the legislation. Section 4 of HB 576 states that if any or all parts of HB 576 is found invalid, any parts found valid will remain in effect. Section 5 of HB 576 states that if the Secretary of the Interior disapproves any provision of the HB 576, then that portion is void. Section 6 of HB 576 states that HB 576 is effective upon passage and approval. Last, Section 7 of HB 576 states that HB 576 applies retroactively to actions for judicial review or other actions challenging permits, amendments, license, arbitration, action, certificate, or inspection that are pending on or after the effective date.

We announced receipt of the proposed amendment in the August 7, 2023, **Federal Register** (88 FR 52084). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. After a request from several public interest groups, we announced a 60-day extension of the comment period until November 6, 2024, in the September 20, 2023, **Federal Register** (88 FR 64853). We also held a Public Hearing on November 1, 2023, in Billings, MT, where we received testimony from 23 individuals. (Administrative Record No. MT–042–23). We also received 232 written comments on the proposed rule. On March 28, 2024, OSMRE sent a letter to MDEQ detailing concerns that OSMRE had with the proposed amendment (Administrative Record No. MT–042–34). The letter offered two options for MDEQ: suspend the amendment to allow MDEQ to make necessary changes or proceed to the Final Rule stage with no changes. MDEQ responded on April 26, 2024, that, because the proposed amendments were the result of legislative action, MDEQ is unable to submit further modifications to address OSMRE's concerns. While OSMRE's letter only solicited a response from MDEQ, several individuals and organizations sent OSMRE responses to the letter as well. Due to the increased interest generated by OSMRE's March 28, 2024, letter to MDEQ, and, in the interest of fairness for public participation, OSMRE announced the re-opening of the public comment period for 15 days, ending August 14, 2024. (Administrative Record No. MT–042–39).

III. OSMRE's Findings

OSMRE reviewed Montana's submittal according to the requirements of SMCRA and the Federal regulations at 30 CFR 730.5, 732.15, and 732.17. As described below, we are approving Montana's submittal in part and disapproving it in part. The severability clause in section 4 of HB 576 indicates that it was the legislature's intent for any parts of the law that are not disapproved by OSMRE to remain in effect. The legislature did not define ''part,'' but in analyzing this proposed amendment, OSMRE analyzed the smallest reasonable elements of the proposed amendment, usually a section, and treated those as individual parts for purposes of severability.

For each part, OSMRE evaluated the cumulative effect of the changes to determine whether each part is in accordance with SMCRA and consistent with the Federal implementing regulations. The individual parts evaluated by OSMRE were MCA sections 82–4–203(32)(a), (b), and (c), and MCA 82–4–222(1)(m). We are approving only those parts of the amendment determined to be in accordance with SMCRA and consistent with the requirements of the Federal regulations, and we are disapproving those sections of the amendment that are not in accordance with SMCRA or are not consistent with the requirements of the Federal regulations.

Specifically, we are: (1) approving Montana's decision to move the currently approved definition of material damage ''with respect to protection of the hydrologic balance'' to subsection (a) of 84–4–203(32) but disapproving any proposed changes to that definition; (2) approving the addition of the proposed definition of material damage ''with respect to an alluvial valley floor'' at section 84–4–203(32)(b); and (3) disapproving the proposed definition of material damage ''with respect to subsidence caused by underground coal mining operation'' at proposed section 84–4–203(23)(c). We are also disapproving the proposed changes to section 82–4–222(1)(m).

A. Montana Code Annotated (MCA) 82–4–203(32)(a)

For section 82–4–203(32)(a), Montana proposes several changes to its definition of ''material damage'' as it relates to impacts to the hydrologic balance from surface and underground coal mining operations. Existing section 82–4–203(32) of the MCA defines ''material damage'' with respect to protection of the hydrologic balance as the ''degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.'' This definition was previously determined by OSMRE to be in accordance with SMCRA and consistent with the Federal implementing regulations when OSMRE conditionally approved Montana's Permanent coal program. 45 FR 21560.

Montana's proposed revision would define ''material damage'' with respect to protection of the hydrologic balance as: ''(i) significant long-term or permanent adverse change by coal mining and reclamation operations to the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected or water rights are impacts; and (ii) long-term or permanent exceedances of a water quality standard outside a permit area if caused by coal mining or reclamation operations, except that in water bodies for which the water quality standard is more stringent than baseline conditions as determined by the department's assessment of the cumulative hydrologic impact findings conducted pursuant to 82–4–222.'' In addition, the definition would specify that ''[f]or those water bodies, a significant, long-term adverse change to the baseline condition of water quality outside of a permit area is material damage if coal mining or reclamation operations cause adverse effects to and use, beneficial uses of water, or water rights.''

Under this proposed revision, for an event or condition to be considered ''material damage to the hydrologic balance'' there must be significant and adverse change to the quality and quantity of water outside the permit area caused by a coal mining and

reclamation operation; the change must be long-term or permanent; and there must be a long-term or permanent exceedance of a WQS outside the permit area. The proposed revision would provide an exception for long-term or permanent exceedance of a WQS for water bodies where WQSs are more stringent than baseline conditions. Those areas instead must show long-term adverse change to the baseline condition of water where coal mining and reclamation operations cause adverse effects to land use, beneficial uses of water, or water rights.

The phrase ''material damage to the hydrologic balance outside the permit area'' appears in SMCRA and within the Federal regulations (30 CFR 816.41) and these references, and other elements of SMCRA and the Federal regulations, provide parameters for interpreting this phase. As a threshold matter, SMCRA's performance standards require that all surface coal mining and reclamation operations ''minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation.'' 30 U.S.C. 1265(b)(10). This standard is accomplished by avoiding acid forming materials, preventing ''to the extent possible using the best technology currently available'' contributions of material to streams but under no circumstances allowing violations of any State or Federal water quality laws, and other practices designed to protect the existing hydrologic systems. *Id.* Similarly, SMCRA requires that underground coal mining operations ''minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after surface coal mining operations and during reclamation.'' 30 U.S.C. 1266(b)(9).

Section 510(b)(3) of SMCRA also states that no application for surface coal mining operations, defined at 30 U.S.C. 1291(28) as including activities related to surface coal mining and reclamation operations and surface effects from underground coal mining and reclamation operations, can be approved unless the application affirmatively demonstrates, and the regulatory authority finds in writing based on the application and available information, that ''the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Section 507(b) has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area.'' 30 U.S.C. 1260(b)(3). Section 507(b)(11) requires that an applicant submit ''a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability.'' 30 U.S.C. 1257(b)(11).

In addition to the statutory standards, the Federal regulations add additional contours to the meaning of ''material damage to the hydrologic balance outside the permit area.'' First, the regulations at 30 CFR 773.15(e) require the regulatory authority to perform an assessment to determine if ''the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.'' Second, the regulations at 30 CFR 780.21(g) and 784.14(f) require a finding that the Cumulative Hydrologic Impact Assessment (CHIA) is ''sufficient to determine, for the purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.'' Third, the regulations at 30 CFR 780.21(h) and 784.14(g) require a permit applicant to provide a Hydrologic Reclamation Plan. These sections state, in relevant part, that the plan must ''contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; [and] to meet applicable Federal and State water quality laws and regulations.'' *Id.* The fact that the Hydrologic Reclamation Plan must outline how an operation will (1) minimize disturbance to the hydrologic balance within the permit area and the adjacent areas, (2) prevent material damage outside the permit area, and (3) meet all applicable Federal and State water quality laws indicates that each element provides a distinct protective benefit and that merely satisfying one element is not sufficient.

Fourth, the regulations at 30 CFR 816.41(a) and 817.41(a) require that all surface and underground mining and reclamation activities must be conducted ''to minimize disturbance to the hydrologic balance within the permit and adjacent areas [and] . . . prevent material damage to the hydrologic balance outside the permit area,'' and that the ''regulatory authority may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.'' Last, the regulations at 30 CFR 816.41(c) and (e), as well as section 817.41(c) and (e), authorize the regulatory authority to modify the monitoring requirements, including parameters and frequency, if the monitoring data demonstrate that the operation has ''minimized disturbance to the hydrologic balance in the permit and adjacent area and prevented material damage to the hydrologic balance outside the permit area.''

While neither SMCRA nor the current Federal regulations define ''material damage to the hydrologic balance outside a permit area,'' for the Federal and Indian lands programs, OSMRE has defined the phrase, as recently as 2024 in various CHIAs as meaning ''any quantifiable adverse impact from surface coal mining and reclamation operations on the quality or quantity of surface water or groundwater that would preclude any existing or reasonably foreseeable use of surface water or groundwater outside the permit area.'' *See* Cumulative Hydrologic Impact Assessment for the Pacific Coast Coal Company John Henry No. 1 Mine, p. 2 (Jan. 2014); Cumulative Hydrologic Impact Assessment of the Navajo Mine and Pinabete Permit Areas, p. 14 (Mar. 2015); Cumulative Hydrologic Impact Assessment of the Peabody Western Coal Company Kayenta Mine Complex, App. A (Sept. 2016); Review and Analysis of Navajo Aquifer Material Damage Criteria for Peabody Western Coal Company's Kayenta Mine Complex, p. 14 (Aug. 2024). These documents recognize that surface coal mining operations will cause hydrologic impacts but indicate OSMRE's interpretation that disturbances to the hydrologic balance within the permit area should be minimized and material damage outside the permit area should be prevented. *Id.* The CHIAs also direct that material damage criteria for both groundwater and surface water quality should be related to existing standards that generally are based on the maintenance and protection of specified water uses such as public and domestic

water supply, agriculture, industry, aquatic life, recreation, and other parameters of local significance to water use. OSMRE also provided a definition of material damage to the hydrologic balance in a 2016 rule (81 FR 93066); however, that rule was disapproved under the Congressional Review Act in 2017 and is no longer in effect.

SMCRA and the Federal program, thus, require that: (1) the regulatory authority must make a written finding that the operation is designed to prevent material damage to the hydrologic balance outside the permit area before the permit can be issued; (2) a permit application must include a plan that shows the operation has been designed to prevent such damage; (3) the operation must be conducted in a manner to prevent such damage; (4) the water monitoring requirements can be modified if warranted to determine whether or not such damage is occurring; and (5) applicable Federal and State water quality laws and regulations must be followed.

With this background in mind, we have evaluated the proposed amendment to the Montana program in relation to Federal statutory and regulatory requirements for preventing ''material damage to the hydrologic balance outside the permit area'' and determined that Montana's proposed changes to section 82–4–203(32)(a) are not in accordance with SMCRA and not consistent with the Federal regulations.

First, Montana's proposed requirement that an impact must be a ''significant long-term or permanent adverse change . . . to the quality of water outside of the permit area'' to be considered material damage is not in accordance with the requirements of SMCRA and not consistent with the Federal regulations. The phrase ''long-term or permanent'' is not defined in the Montana code or regulations. Without a definition or guidance on what constitutes a ''long-term or permanent'' adverse change, it would be very difficult to establish a metric for what constitutes a long-term impact, and such a metric would likely exclude significant short-term impacts to the quality or quantity of water outside the permit area from ever being considered material damage to the hydrologic balance. As a result, this proposed change to the definition would appear to explicitly authorize minor, short-term adverse changes caused by coal mining and reclamation operations to the quality or quantity of water outside the permit area, which is contrary to SMCRA's requirement that all surface coal mining and reclamation operations must de designed to ''minimize the disturbance to the prevailing hydrologic balance . . . both during and after'' mining, without limit to duration. 30 U.S.C. 1265(b)(10). Thus, this proposed change renders the definition of material damage to the hydrologic balance less stringent than SMCRA and less effective than the Federal regulations.

Second, the requirement that material damage to the hydrologic balance can only be found where there are also ''long-term or permanent exceedances of a water quality standard outside a permit area'' caused by coal mining or reclamation operation is not in accordance with SMCRA or consistent with the Federal regulations. A violation of a State or Federal WQS as a result of a surface coal mining and reclamation operation is not allowed under SMCRA and would constitute material damage to the hydrologic balance. However, material damage to the hydrologic balance could also occur without a long-term or permanent exceedance of a WQS outside the permit area. Requiring that an impact be a ''significant long-term or permanent adverse change'' and also a long-term or permanent exceedance of a WQS would significantly weaken the standard for material damage to the hydrologic balance. Therefore, this change would make Montana's program neither in accordance with SMCRA nor consistent with the Federal regulations.

A regulatory authority will set and monitor WQSs to ensure that surface coal mining operations are preventing ''material damage to the hydrologic balance.'' These standards are underpinned by a combination of State and Federal water quality laws and regulations. General effluent limitations for coal mining are promulgated by the U.S. Environmental Protection Agency (EPA) as set forth in 40 CFR part 434, and the individualized standards for an operation are determined by the regulatory authority based on the information provided in a permit application. As required in 30 CFR 780.21(i) and (j), a surface coal mining operation permit application must include both a groundwater monitoring plan and surface water monitoring plan. These plans identify the water quality and quantity parameters to be monitored, how often they are to be sampled, and where they are to be sampled. The sampling data are then used to assess the suitability of the water for current and approved postmining land uses and to meet the objectives for protection of the hydrologic balance, as described in 30 CFR 780.21(h), which includes preventing ''material damage to the hydrologic balance outside the permit area.''

In a 1983 rulemaking, commenters urged OSMRE to define ''material damage to the hydrologic balance'' or establish guidelines to evaluate whether material damage would occur from a proposed operation. In response, OSMRE stated that it agreed that a regulatory authority should establish guidelines, but, ''because the gauges for measuring material damage may vary from area to area and from operation to operation, [OSMRE] has not established fixed criteria, *except for those established under §§ 816.42 and 817.42 related to compliance with water-quality standards and effluent limitations.*'' 48 FR 43973 (emphasis added). Thus, OSMRE intended the WQSs set by 30 CFR 816.42 and 817.42 to be used as criteria for determining ''material damage to the hydrologic balance,'' and an exceedance of those WQSs is inherently ''material damage to the hydrologic balance.''

Because a violation of a WQS is an established criterion for determining if ''material damage to the hydrologic balance'' has occurred, any regulations proposed by Montana must be in accordance with and consistent with this Federal standard. In Montana's proposal, it moves its requirement that violations of WQSs are ''material damage to the hydrologic balance'' to the newly created section 82–4–203(32)(a)(ii). The structure of the proposed new section makes the rule less effective than the Federal regulations because, for something to constitute ''material damage to the hydrologic balance,'' it would need to be both (1) a significant, long-term or permanent, adverse change to water quality or quantity, *and* (2) a long-term of permanent exceedance of a WQS (emphasis added). While, as discussed above, a violation of a WQS is an established criteria to categorize an event as causing ''material damage to the hydrologic balance'' in the Federal regulations, it is incorrect to assume that ''material damage to the hydrologic balance'' will *always* include an exceedance of a WQS. The determinations of Probable Hydrologic Consequences (PHC) and CHIA both require information on water quantity as well as water quality. 30 CFR 780.21. The CHIA and PHC are used to determine if a proposed operation is designed to prevent ''material damage to the hydrologic balance,'' and the permittee is required to operate the mine in such a way that prevents ''material damage to the hydrologic balance.'' Under the Federal regulations, both water quality and quantity issues

can be used to determine if material damage to the hydrologic balance has occurred. There is nothing in the Federal regulations that suggests a water quantity violation on its own would not be considered ''material damage to the hydrologic balance'' or that some additional ''significant, long-term or permanent, adverse change to water quality or quantity'' must also be present to find that material damage has occurred. Thus, Montana's assertion that there must always be a violation of a WQS for an event or condition to be considered ''material damage to the hydrologic balance'' is inconsistent with the Federal regulations.

Finally, Montana's proposed changes would also add a requirement that an exceedance of a WQS must be ''long-term or permanent'' to be considered ''material damage to the hydrologic balance.'' As discussed above, any exceedance of a WQS caused by a surface coal mining and reclamation operation is a violation of SMCRA. Requiring that a water quality exceedance be ''long-term or permanent'' ignores the destructive capabilities of a single short-term disturbance event. For example, a large amount of a regulated pollutant could be accidently discharged into a river and cause a WQS exceedance. The pollutant could then quickly move downstream with the flow of water and adversely affect the water quality at the mine site and adjacent area; while of short duration, the event could negatively impact aquatic life, drinking water, or recreational uses. If this disturbance was instead an unintended groundwater capture leading to de-watering of local wells or increased sedimentation into a nearby creek causing channel diversions, the vagueness of the term ''long-term'' makes it unclear whether it would rise to the level of material damage to the hydrologic balance. Under no circumstances should a WQS violation caused by a mining or reclamation operation be ''long-term,'' and Montana's proposal to require that a water quality exceedance must be ''long-term or permanent'' to be considered material damage to the hydrologic balance would make the Montana program less effective than SMCRA and the Federal regulations. As an example, under this proposed amendment, an operator could repeatedly exceed WQSs outside of the permit area but attempt to avoid a determination that the impact was material damage to the hydrologic balance by MDEQ by starting and stopping pollution events before meeting the vague ''long-term or permanent'' threshold.

For the reasons above, we are disapproving the proposed changes to subsection (a) of Montana's new definition to material damage with respect to protection of the hydrologic balance. We are, however, approving the non-substantive restructuring of this section so that the prior definition of material damage to the hydrologic balance is included in subsection (a). All other proposed changes to section 82–4–203 (32)(a) are denied. Approved subsection (a) now states: ''with respect to protection of the hydrologic balance, degradation or reduction-by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.''

B. MCA 82–4–203(32)(b)

We are approving the proposed changes to MCA section 82–4–203(32)(b) because we find that the changes to section 82–4–203(32)(b) are in accordance with SMCRA and consistent with the Federal regulations.

Section 82–4–203(32)(b) proposed to define ''material damage'' with respect to alluvial valley floors as ''degradation or reduction by coal mining and reclamation operations of the water quality or quantity supplied to the alluvial valley floor that significantly decreases the capability of the alluvial valley floor to support agricultural activities[.]''

This proposed definition is nearly identical to the Federal definition of ''materially damage the quantity or quality of water'' in 30 CFR 701.5, which provides that, ''with respect to alluvial valley floors, [material damage the quantity or quality of water is] to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.'' The biggest difference between the proposed State definition and the Federal regulation is that the Federal definition limits the definition to how the water supplied to the alluvial valley floor affects ''farming,'' while Montana's definition expands this to ''agricultural activities.'' Farming, with respect to alluvial valley floors, is defined in 30 CFR 701.5 and means ''the primary use of those areas for the cultivation, cropping or harvesting of plants which benefit from irrigation, or natural subirrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition, harvesting does not include the grazing of livestock.'' The term ''Agricultural activities'' is defined in 30 CFR 701.5 as, with respect to alluvial valley floors, ''the use of any tract of land for production of animal or vegetable life based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.'' Thus, under the Federal regulations, the term ''agricultural activities'' is broader than the term ''farming'' because it includes animal production in addition to cultivating crops.

Montana's approved program does not include a definition of farming or agricultural activities, making it difficult to understand the exact scope of activities included in Montana's definition. However, despite the lack of definition, the similarity in the language and common understanding that agricultural activities would at a minimum include farming lead OSMRE to determine that Montana's definition of material damage with respect to alluvial valley floors at section 82–4–203(32)(b) is in accordance with SMCRA and consistent with the Federal regulations.

C. MCA 82–4–203(32)(c)

We are denying the proposed addition of MCA section 82–4–203(32)(c). This proposed change would add paragraph (c) to section 82–4–203(32) to provide a definition of ''material damage'' resulting from subsidence caused by an underground coal mining operation. As proposed, this definition would mean: ''any functional impairment of surface lands, features, or structures; (ii) any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or (iii) any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.'' Following our review, we find that proposed section 82–4–203(32)(c) is inconsistent with the Federal regulations and are not approving this proposed change.

Montana's proposed definition of ''material damage'' caused by subsidence is nearly identical to the Federal definition of ''material damage'' as it relates to subsidence at 30 CFR 701.5. However, unlike the Federal regulations, Montana's definition does not include ''facilities'' in its list of features that can be considered functionally impaired by subsidence in proposed section 82–4–203(32)(c)(i). Montana has not provided clarification as to why ''facilities'' was omitted from this proposed paragraph. In deciding whether this proposed regulation can be approved, we must determine if grouping the term ''facilities'' within the term ''structure'' would make this paragraph as effective as the Federal regulations.

Neither the Federal nor the Montana regulations formally define ''facility'' or ''structure,'' so we use the plain language definition of both terms, as well as how they are used throughout the Federal regulations to determine their meanings. ''Structure'' generally is used to refer to a standalone, human-made formation that performs an intended job, such as a diversion, sediment pond, refuse pile, or road. Defined terms in § 701.5 of the Federal regulations that use the term ''structure'' in their definitions but not the term ''facility'' include: ''head-of-hollow fill,'' ''impoundments,'' and ''valley fill.'' ''Facility,'' on the other hand, generally is used to describe a place, or collection of structures that performs a more complex task. Defined terms in § 701.5 of the Federal regulations that use the term ''facility'' in their definitions but not ''structure'' include: ''public office'' and ''coal preparation plant.'' The two terms have distinct and separate meanings, and the plain language definition of ''structure'' does not fully encapsulate the meaning of ''facilities'' as there are facilities that do not contain structures. Furthermore, Montana uses the phrase ''structure or facility'' in proposed section 82–4–203(32)(c)(iii). Listing both terms here, and using ''or'' to connect them, indicates that Montana understands the two terms have distinct and separate meanings. Thus, omitting ''facilities'' from the list of features that can be considered functionally impaired by subsidence in proposed section 82–4–203(32)(c)(i) would not be in accordance with SMCRA or consistent with the requirements of the Federal regulations.

D. MCA 82–4–222(1)(m)

We are denying all proposed changes to MCA section 82–4–222(1)(m). HB 576, in part, modified MCA sec. 82–4–222(1)(m) to delete the following two sentences: ''However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency. The permit may not be approved until the information is available and is incorporated into the application.'' Section 82–4–222 pertains to permit applications for the Montana program, and paragraph (1)(m) discusses the determination of the probable hydrologic consequences of coal mining and reclamation operations. By this change, Montana proposes to remove two requirements from section 82–4–222(1)(m). First, Montana proposes to remove the requirement that the permit applicant's determination of probable hydrologic consequences is not required until hydrologic information of the pre-mining area is made available from an appropriate Federal or State agency. Second, Montana proposes to remove the requirement that the relevant permit may not be approved until the hydrologic information is available and incorporated into the application.

The Federal counterparts to this requirement are found in 30 U.S.C. 1257(b)(11) and 30 CFR 780.21(c)(1), (c)(2), (f)(1), and (f)(2). The statutory provisions at 30 U.S.C. 1257(b)(11) require that a determination of probable hydrologic consequences of a mining operation ''shall not be determined until hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency . . . .'' The regulations at 30 CFR 780.21(c)(1) state that hydrologic and geologic information are necessary to assess probable cumulative hydrologic impacts and that, if the necessary hydrologic and geologic information is available from an appropriate Federal or State agency, then that information must be provided to the regulatory authority in order for it to assess probable cumulative hydrologic impacts. The regulations at 30 CFR 780.21(c)(2) state that, if the necessary hydrologic and geologic information is not available from a Federal or State agency, the operator may submit hydrologic and geologic information that it has collected on its own. The regulations at 30 CFR 780.21(f)(1) state that an application must have a PHC determination, and paragraph (f)(2) continues by providing that the PHC must be determined using hydrologic and geologic information that is collected for the permit application.

The removal of the two requirements from section 82–4–222(1)(m), as described above, would mean that the MDEQ's hydrological determination is not required until hydrologic information is available from an appropriate Federal or State agency and would also mean that the Montana program would no longer meet all of the requirements set forth in 30 U.S.C. 1257(b)(11) and would make the Montana program less effective than 30 CFR 780.21(f)(2). The regulations at 30 CFR 780.21(f)(2) require a determination of PHC to be made using the baseline hydrologic information that was collected for the permit application. By proposing to remove the provision that permit applicant's PHC determination is not required until hydrologic information of the pre-mining area is made available from an appropriate Federal or State agency, Montana's program would allow an applicant to make a PHC determination before all of the necessary hydrologic information is gathered, which could limit the quality of the PHC.

The regulations at 30 CFR 780.21(c)(3) state that a permit must not be approved until the necessary hydrologic and geologic information is available to the regulatory authority. Because this Federal regulation requires hydrologic and geographic information to be provided to a regulatory authority before an application is approved, Montana's proposed removal of the same requirement in section 82–4–222(1)(m) would make it inconsistent with the Federal regulations. Thus, we are denying all of Montana's proposed changes to section 82–4–222(1)(m) of the MCA.

E. Section 4, 5, 6, & 7 of House Bill 576

During the 2023 legislative session, Montana passed HB 576, which modified sections 82–4–203(32) and 82–4–222(1)(m). HB 576 also added contingencies that are not codified into the MCA but that affect the amended parts of the MCA.

1. Section 4. Severability

Section 4 of HB 576 states that if any part of HB 576 is found invalid, the remainder of the bill that is found valid will be severable from the invalid part and remain in effect. While this is legislative language and not part of Montana's surface mining program, we note that the Federal regulations at 30 CFR 732.17(h)(7) require the Director to consider all relevant information, using the criteria set forth in 30 CFR 732.15, to approve or disapprove the amendment. The Director may approve all or parts of an amendment that are in accordance with SMCRA and consistent with the Federal regulations. Here, notwithstanding section 4 of HB 576, OSMRE has identified the sections that

are approved and the sections that are disapproved.

2. Section 5. Contingent Voidness

Section 5 of HB 576 states that, if the Secretary of the Interior disapproves of any provision of HB 576 under 30 CFR part 732, then that portion of the bill is void. Furthermore, MDEQ is required to notify the code commissioner of a disapproval within 15 days of the effective date of disapproval. Notwithstanding HB 576, the Federal regulations give the Director the authority to approve or disapprove all or part of a proposed amendment to a State program. 30 CFR 732.17(h)(7). Any program amendment or part of a program amendment disapproved by the Director would be void and would not become part of Montana's approved program.

3. Section 5: Immediate Effectiveness

Section 6 of HB 576 states that its provisions are effective on passage and approval of the bill. This provision is contrary to SMCRA and the Federal regulations that state that no change to law or programs can take effect for purposes of a State program until the amendment is approved by the Director. 30 CFR 732.17(g).

4. Section 7: Retroactive Applicability

Section 7 of HB 576 states that amendments to the MCA apply retroactively to actions for judicial review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after the effective date of HB 576. Section 7 of HB 576 attempts to make the proposed changes to sections 82–4–203(32) and 82–4–222(1)(m) apply retroactively to pending issues that have not been decided on or after the effective date of HB 576. As with the attempt to make the changes in HB 576 effective immediately, this section is contrary to SMCRA and the Federal regulations. Specifically, the Federal regulations at 30 CFR 732.17(g) mandate that no changes to laws will take effect until OSMRE approves the amendment, and section 723.17(i)(12) states that all decisions of the Secretary to approve or disapprove program amendments must be published in the **Federal Register**. The Administrative Procedure Act generally requires a 30-day delay before a rule becomes effective. 5 U.S.C. 553(d).

IV. Summary and Disposition of Comments

We asked for initial public comments on the amendment during a public comment period that ended on November 6, 2023. We received 232 written comments during our initial comment period, and we received testimony from 23 individuals at a public hearing held in Billings, MT on November 1, 2023. (Administrative Record No. MT–042–23). As mentioned above, on March 28, 2024, OSMRE sent a letter to MDEQ. (Administrative Record No. MT–042–34). The letter detailed concerns that OSMRE had with the proposed amendment, all of which is described in Section III above. While the letter only solicited a response from MDEQ, OSMRE received several unsolicited responses for other parties. Due to the increased interest in the proposed amendment generated by that letter, and, in the interest of fairness for public participation, OSMRE announced the re-opening of the public comment period for 15 days on July 30, 2024. (Administrative Record No. MT–042–39).

Due to the large number of comments, substantially similar comments and points have been consolidated to avoid redundancy. Over 190 commenters were opposed to the approval of this amendment and raised similar concerns, discussed below. Comments expressing generalized support for or opposition to the proposed amendment, generalized concerns about environmental impacts from mining operations, concerns about the mining industry, fossil fuel use, and the need for the United States to transition to renewable energy, general statements about the public's opposition to HB 576 and prior legislative efforts, comments about SB 392 and the topic of litigation and attorney's fees (which will be discussed in a separate Final Rule Notice (MT–043–FOR)), and other non-responsive comments are beyond the scope of this amendment and no response is necessary. To view comments in full, visit *https://www.regulations.gov/.*

Comment 1: There was consensus among the group of 190 commenters in opposition to the proposed amendment that the use of ''significant long-term or permanent,'' as applied to the definition of ''material damage to the hydrologic balance,'' was too ambiguous. They expressed concern that because these terms are not defined, MDEQ or a judge could interpret these terms too subjectively, and that the ambiguity of this language ''all but guarantee[s] some degree of damage outside of a permit boundary.''

OSMRE Response: OSMRE agrees with commenters' concerns that, without a definition or guidance on what constitutes a ''long-term or permanent'' adverse change, it would be very difficult to establish a metric for what constitutes a long-term impact and that this proposed change renders the definition of material damage to the hydrologic balance not in accordance with SMCRA and inconsistent with the Federal regulations. Please see Section III(A) to see OSMRE's full discussion about the proposed definition of ''material damage to the hydrologic balance.''

Comment 2: Similarly, commenters opposed to this proposed amendment repeatedly considered Montana's proposed changes to baseline condition requirements to be inadequate because the proposed amendment removes the requirement that an operation submit baseline water information while also having a determination of ''material damage to the hydrologic balance'' rely on baseline water information.

OSMRE Response: OSMRE agrees that Montana's proposed edits to section 82–4–222(1)(m) would make Montana's program not in accordance with SMCRA and inconsistent with the Federal regulations. Please see Section III(D) for OSMRE's discussion on the proposed changes to baseline hydrologic information.

Comment 3: Several commenters stated that the immediate effective date and retroactive applicability of the bill are inconsistent with Federal regulations, citing 30 CFR 732.17(g), which requires that no State coal regulations go into effect until approved by OSMRE, and 30 U.S.C. 1202(i), which requires all appropriate procedures are followed for public participation in the revision of a State's program.

OSMRE Response: We agree with these commenters on the proposed immediate effective date and retroactive applicability provisions; please see OSMRE's full discussion in Section III(E).

Comment 4: Some commenters opined that the proposed change of definition for ''material damage to the hydrologic balance'' is inadequate and pointed to *Ohio River Valley Envtl. Coalition, Inc.* v. *Norton,* 2005 WL 2428159 (S.D.W. Va. Sept. 30, 2005), a case where a court found similar language in a West Virginia Amendment to be less effective than the Federal regulations. They noted that the court found that West Virginia's amendment to its definition of ''material damage'' failed because it did not provide a reasoned analysis to explain how a subjective standard with vague terms (''long-term or permanent change'') can ensure that the State program amendment was not less effective than the Federal regulations. Commenters stated that HB 576 fails on the same

grounds, as the proposed definition of ''material damage to the hydrologic balance'' and its use of the terms ''long-term or permanent'' does not give MDEQ clear standards when applying the definition. They stated that, as written, the Montana amendment would allow an operator to violate WQSs so long as they are not ''long-term or permanent'' violations.

OSMRE Response: OSMRE has disapproved this portion of Montana's proposed amendment. Please see OSMRE's discussion of the definition of ''material damage to the hydrologic balance'' and its effects on WQSs in Section III(A). Additionally, OSMRE notes that the West Virginia definition of ''material damage to the hydrologic balance'' that was discussed in *Ohio River Valley Envtl. Coalition, Inc.* v. *Norton,* 2005 WL 2428159 (S.D.W. Va. Sept. 30, 2005), was later approved by OSMRE in 2008, 73 FR 78979, and OSMRE's approval of the definition was upheld by the Fourth Circuit in *Ohio River Valley Envtl. Coalition, Inc.* v. *Salazar,* 466 Fed. Appx. 161, 167 (4th Cir. 2012). While OSMRE approved West Virginia's definition of ''material damage of the hydrologic balance,'' the definition was applied only in the context of a CHIA and, thus, is different from Montana's proposed definition in this amendment.

Comment 5: Commenters stated that, as proposed, the Montana amendment conflicts with 30 U.S.C. 1292(a)(4), a provision of SMCRA that prevents the law from altering the Clean Water Act (CWA). The preamble to the Federal rulemaking stated that there are no fixed criteria for ''material damage'' except for compliance with WQSs, and, as proposed, Montana would allow long term or permanent violations of water quality; thus, the commenters concluded that Montana would be violating the protections of the CWA.

OSMRE Response: OSMRE disagrees with the comment that the proposed change to ''material damage to the hydrologic balance'' would violate the CWA. As discussed in more detail below, the EPA submitted a comment on this amendment stating that the proposed amendment would not impact or alter MDEQ's obligations under the CWA. (Administrative Record No. MT–042–07). OSMRE does agree that requiring a ''long-term or permanent'' violation of WQSs in order to trigger ''material damage to the hydrologic balance'' would not be in accordance with SMCRA and would not be consistent with the Federal regulations, and we have denied this portion of Montana's proposal. Please see Section III(A) for our full discussion on this topic.

Comment 6: Commenters contended that the proposed changes to section 82–4–222(1)(m) conflict with SMCRA and that the proposed deletions violate 30 CFR 780.21(c)(1), (f), and (g)(1), and 30 U.S.C. 1257(b)(11).

OSMRE Response: We agree that Montana's proposed changes to section 82–4–222(1)(m) are inconsistent with the Federal regulations and have denied the portion of Montana's proposal. Please see our full discussion in Section III(D).

Public Comment 7: A commenter stated that HB 576 will further deepen ongoing issues around water quality and quantity for cattle and subsidence cracks.

OSMRE Response: OSMRE determined that the proposed definition for ''material damage to the hydrologic balance'' was neither in accordance with SMCRA nor consistent with the Federal regulations and denied substantive changes to the amendment. Please see Section III(A) and III(C) for OSMRE's discussion on Montana's proposed changes.

Public Comment 8: Commenters agreed with OSMRE's preliminary findings in its OSMRE's March 28, 2024, letter to MDEQ that the use of ''significant'' and ''permanent or long-term'' in the proposed definition of ''material damage to the hydrologic balance'' is less stringent and effective than SMCRA and the Federal regulations. They disagreed with industry comments to the effect that Montana's definition of ''material damage to the hydrologic balance'' cannot ''run afoul'' of Federal law because there is no Federal definition of the term. The commenters stated that this argument has been rejected by Federal courts, citing *Ohio River Valley Envt'l Coal., Inc.* v. *Kempthorne,* 473 F.3d 94, 103 (4th Cir. 2006).

OSMRE Response: Consistent with our preliminary findings in our March 28, 2024, letter to MDEQ, we have denied the proposed changes to the definition of ''material damage to the hydrologic balance.'' For further information, please see OSMRE's discussion of the use of ''significant'' and ''long-term or permanent'' within this definition in Section III(A), as well as our response to industry commenters below.

Public Comment 9: Commenters expressed concern that a requirement that harm to the hydrologic balance must be ''permanent or long-term'' to rise to the level of ''material damage'' and asserted that such an interpretation would contradict SMCRA requirements at 30 U.S.C. 1202(b), 1259, and 1307(b). Commenters raised concerns that HB 576 would allow short- or medium-term impacts of high magnitude to water quality and quantity, contrary to comments submitted by industry.

OSMRE Response: We are denying Montana's proposed definition of material damage with respect to protection of the hydrologic balance because it not in accordance with SMCRA and is inconsistent with the Federal regulations. Please see Section III(A) for the discussion of our decision.

Public Comment 10: Commenters expressed concern that HB 576 is inconsistent with the Montana Water Quality Act and the CWA because the proposal would allow pollution events that violate WQSs in short- and medium-term timeframes. Thus, commenters argue that HB 576 also violates SMCRA by superseding provisions of the CWA.

OSMRE Response: We note that the EPA found that the proposed changes would not violate the CWA because the statute could not supersede the EPA's regulations regarding WQSs. Nevertheless, for the reasons set forth in Section III(A) above, we are denying the portion of Montana's proposal that would change the current definition of material damage to the hydrologic balance because it is not in accordance with SMCRA and not consistent with the Federal regulations. Further discussion of EPA's comment can be found below.

Public Comment 11: Commenters stated that Montana's proposed definition is distinguishable from the Wyoming and West Virginia definitions. They allege that OSMRE's decision for Wyoming shows the agency's long-standing position that ''material damage'' cannot be ''time limited'' and that, unlike West Virginia, Montana's proposed definition of ''material damage'' is a performance standard as well as a reclamation standard and would have much broader applicability than the West Virginia definition.

OSMRE Response: Please see OSMRE's response to Industry Comment 2 below.

Public Comment 12: Commenters agreed with OSMRE's preliminary findings in our March 28, 2024, letter to MDEQ, that Montana's proposed requirement that water quality violations be ''long-term or permanent'' to be considered ''material damage to the hydrologic balance'' is inconsistent with SMCRA and the Federal regulations. The commenters noted that the proposed change to the definition of ''material damage to the hydrologic balance'' was not necessary to enable

strip-mining adjacent to water bodies that had failed water quality standards prior to the permittee's mining, as long as the mine does not cause additional harms to water quality. The Montana Supreme Court in *Montana Env't Info. Ctr.* v. *Westmoreland Rosebud Mining, LLC,* 2023 MT 224, 68–70, 414 Mont. 80. 545 P.3d 623, held that under Montana's current definition of ''material damage,'' an existing impairment to a water body does not prevent additional mining unless the mining threatens to cause additional harm to water quality.

OSMRE Response: OSMRE is disapproving Montana's proposed definition of ''material damage'' with respect to protection of the hydrologic balance. Because other non-segregable elements of this definition rendered the proposed definition not in accordance with SMCRA and not consistent with the Federal regulations, we did not reach a determination of appropriateness about this provision. Please see OSMRE's discussion of the topic in Section III(A), as well as our response to Industry Comment 10.

Public Comment 13: Commenters concurred with OSMRE's preliminary finding in the March 28, 2024, letter that we sent to MDEQ that stated that the omission of ''facilities'' from the proposed definition of ''material damage'' in relation to subsidence is less stringent than SMCRA and less effective than the Federal regulations. Commenters noted that even if the omission of ''facilities'' was a mistake, the definition should not be approved because the provision, as written, is less protective than the Federal standards and courts and regulators are supposed to apply statutes as written, without adding or subtracting language.

OSMRE Response: OSMRE agrees. Please see OSMRE's discussion of ''material damage'' regarding subsidence in Section III(C).

Public Comment 14: Commenters supported OSMRE's preliminary finding in the March 28, 2024, letter that we sent to MDEQ that stated that Montana's proposed deletion of the requirement to obtain and submit baseline information from State and Federal agencies, and the prohibition on permit issuance until such information is available, is inconsistent with and less stringent than SMCRA. The commenters stated that industry comments indicating that the amendment would not allow permit issuance without the necessary information baseline information is without support.

OSMRE Response: Please see OSMRE's discussion of Montana's proposed changes to baseline hydrologic information in Section III(D), as well as our response to industry comments, below.

Public Comment 15: Commenters expressed support for OSMRE's preliminary finding in the March 28, 2024, letter that we sent to MDEQ that stated that State program amendments cannot be made immediately effective by an act of a State legislature because it is inconsistent with SMCRA. Commenters noted that section 505(a) of SMCRA is not a declaration of State law supremacy but is instead a clarification that State law may not be superseded by SMCRA, except when it is inconsistent with SMCRA or its regulations. Commenters added that *W. Virginia Highlands Conservancy* v. *Norton,* 137 F. Supp.2d 687, 697 (S.D.W. Va. 2001), supports their position that SMCRA does not violate the Tenth Amendment of the constitution and Federal law is not supplanted when a State gains primacy over its own coal program. Commenters argued that OSMRE possesses the statutory authority to determine whether sections 6 and 7 of HB 576 are inconsistent with the Federal regulations.

OSMRE Response: Please see OSMRE's discussion of the topic in Section III(E), as well as our response to Industry Comment 13, below.

Public Comment 16: Commenters stated that the fact that there is not a Federal definition of ''material damage to the hydrologic balance'' does not give states the ability to establish definitions of ''material damage to the hydrologic balance'' that conflict with other provisions of SMCRA or the Federal regulations. Citing 30 CFR 730.5, commenters stated that if a term is found to be less stringent or less effective than SMCRA or the Federal implementing regulations, then it may not be approved.

OSMRE Response: OSMRE agrees that any definition of ''material damage to the hydrologic balance'' must be in accordance with all provisions of SMCRA and consistent with all provision of the Federal regulations as those terms are defined in 30 CFR 730.5. The absence of a Federal definition of a term does not allow a State program to create definition that is in conflict with any provision in SMCRA or the Federal implementing regulations.

Public Comment 17: Commenters stated that every part of HB 576 is inconsistent with SMCRA, except Section 4, Severability, and Section 5, Contingent Voidness, and that, because all substantive portions of the bill should be disapproved by OSMRE, the entire amendment should be disapproved.

OSMRE Response: OSMRE, when processing program amendments, has the discretion to approve, disapprove, or approve portions of an amendment while disapproving other portions of an amendment. Here, OSMRE reviewed each proposed provision to determine if it was in accordance with SMCRA and consistent with the Federal regulations. After this analysis, OSMRE is disapproving the proposed changes to MCA 82–4–203(32)(a) and (c) and MCA 82–4–222(32)(1)(m) but approving the proposed definition at 82–4–203(32)(b) and approving the renumbering of the existing definition of material damage ''with respect to protection of the hydrologic balance'' from section 82–4–203(32) to section 82–4–203(32)(a).

Public Comment 18: Commenters stated that the proposed revisions to the requirements for hydrologic information for permit applications would allow mining to begin before necessary data collection and risk analyses are finished. They state that the requirements for hydrologic information are supposed to prevent unforeseen circumstances and dire effects to water quality and quantity, as most mining is detrimental to water pre-existing on the land before the mine is permitted. They stated that they were opposed to any changes that would allow for permit approval before hydrologic information is assessed.

OSMRE Response: We are denying the proposed changes to MCA 82–4–222(1)(m). Please see our full discussion in Section III(D).

Industry Comment 1: Industry commenters stated that the proposed definition of ''material damage to the hydrologic balance'' is more consistent with the plain meaning of ''material damage'' than the current definition. They alleged that removing the requirement that any water quality exceedance is per se ''material damage'' prevents a company from being accused of having caused ''material damage'' simply because they remain consistent with pre-existing exceedances of WQSs that are caused by factors other than coal mining. Commenters maintained that Montana's addition of ''significant'' to its definition of ''material damage to the hydrologic balance'' is consistent with SMCRA and the Federal regulations. Commenters pointed to the Federal definitions of ''material damage'' with respect to subsidence and alluvial valley floors, both of which use ''significant'' in their definitions.

OSMRE Response: OSMRE does not agree that the proposed definition of ''material damage to the hydrologic balance'' or that the addition of ''significant'' to the definition is in

accordance with SMCRA or consistent with the Federal regulations, and we have disapproved the proposed change to that definition. For a complete discussion of OSMRE's analysis of the proposed definition, please look to Section III(A).

Industry Comment 2: Commenters noted that Montana's proposed definition of ''material damage to the hydrologic balance'' is very similar to the definitions used in Wyoming (WCWR 020–0006–1 (cf)) and West Virginia (W.Va. CSR 38–2–3(3.22.e)). Both definitions require that ''material damage to the hydrologic balance'' must be ''significant'' and ''long-term.'' Commenters stated that, like West Virginia, Montana's definition of ''Material damage to the hydrologic balance,'' is limited to CHIAs and the assessment of Probable Cumulative Impact (PCI). For Wyoming, commenters alleged that OSMRE erred in relying on an ''informal clarification'' provided by the Wyoming State program to approve the Wyoming definition. They claim that this extra-statutory evidence overrules the plain text of the State law, and that the plain language of Wyoming's definition encompassed both short and long-term events just as the plain language of Montana's proposed amendment would cover both short-term and long-term events.

OSMRE Response: We acknowledge that Montana's proposed definition of ''material damage the hydrologic balance'' is superficially similar to that of Wyoming and West Virginia, but upon closer examination, Montana's proposed use of ''long-term or permanent'' in its definition of ''material damage of the hydrologic balance'' is distinguishable. Wyoming, for instance, defines ''material damage to the hydrologic balance'' as ''a significant long-term or permanent adverse change to the hydrologic regime.'' WCWR 020–0006–1 (cf). Our approval of the Wyoming definition, however, was informed by Wyoming's clarification that this definition was not time-restricted and that ''its regulations and statutes require, by common usage and definition, prevention of long- and short-term adverse changes and uses.'' 45 FR 20940 (Mar. 31, 1980). Montana, to the contrary, has provided no similar clarity for its definition, so we interpreted the proposed change based on the plain meaning of the language provided to mean that it has a time-based restriction.

Similarly, West Virginia defines ''material damage to the hydrologic balance'' within its regulations on CHIAs to mean ''any long term or permanent change in the hydrologic balance caused by surface mining operation(s), which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.'' W.Va. CSR 38–2–3(3.22.e); *see also* 73 FR 78970, 78974 (Dec. 24, 2008). This definition of ''material damage to the hydrologic balance'' is limited to CHIAs and does not apply more broadly to the West Virginia program, such as determining whether a violation of the material damage to the hydrologic balance standard exists. This is an important distinction because CHIAs are cumulative assessments performed *before* issuing any coal mining permit, and thus it is reasonable that they would look to ''long term or permanent'' effects on the hydrologic balance. West Virginia's definition of ''material damage to the hydrologic balance,'' however, does not apply in other places within the regulations. Conversely, contrary to the assertions of this commenter, the way this proposal is drafted, the requirement that impacts must be ''long-term or permanent'' would be applied for all iterations of ''material damage to the hydrologic balance.'' Therefore, as discussed above, this would make Montana's regulations inconsistent with the Federal regulations.

Industry Comment 3: Commenters stated that the removal of language from section 82–4–222(1)(m) removes an implication that the issuance of a permit under MSUMRA requires input from some agency other than the MDEQ and, they opined that, as proposed, this section closely tracks the Federal regulations at 30 CFR 780.21(f). They also added that nothing in the proposed language compels MDEQ to issue permits absent the required information.

OSMRE Response: Please see Section III(D) to see OSMRE's findings about baseline hydrologic information. OSMRE disagrees with this commenter's statement that Montana's proposed changes to section 82–4–222(1)(m) remove an implication that the appropriate hydrologic information must be provided by an agency other than MDEQ. No such implication exists. Montana's current language requires that hydrologic information be ''made available from an appropriate federal or state agency.'' MDEQ is an appropriate State agency.

Industry Comment 4: Commenters stated that, because there is no Federal definition of ''material damage to the hydrologic balance,'' Montana has broad discretion to define the term. A member of the Montana Legislature made a similar comment.

OSMRE Response: We acknowledge that there is no Federal definition for this term, but any definition proposed by Montana must be in accordance with SMCRA and consistent with the Federal regulations. We have determined that Montana's proposed definition does not meet that standard, even though there is no definition of that term in the Federal regulations. Please see Section III(A) for a more thorough discussion of our analysis on this topic.

Industry Comment 5: Commenters stated that the proposed amendment clarifies the distinction between SMCRA's protection of the hydrologic balance and the CWA's application to point source pollution. They note that, on one hand, the NPDES program is a regulatory scheme that regulates the discharge of surface and stormwater that interacts with areas of mining activity and protects acute water quality issues, whether temporary or permanent, within the permit area. According to the commenters, SMCRA, on the other hand, protects the hydrologic balance of the area, which is an assessment of cumulative impacts from coal mining and its impact outside the permit area. Commenters state that by removing the current language in section 82–4–203(32), which provides that a WQS violation is considered material damage to the hydrologic balance, the proposed Montana regulations will better distinguish the separate roles of SMCRA and the CWA.

OSMRE Response: We are disapproving the proposed section of amendment. Please see Section III(A) for our discussion on the relationship between EPA WQSs and the definition of ''material damage of the hydrologic balance.''

Industry Comment 6: Commenters opined that OSMRE should not dictate how a State implements SMCRA in its own program. They stated that OSMRE's role is to determine if a State's regulations are in accordance with and consistent with the provisions of SMCRA and that a State is consistent with SMCRA when it is no less stringent than, meets the requirements of, and include all applicable provisions of SMCRA.

OSMRE Response: This particular proposed amendment was submitted voluntarily by Montana. Under 30 CFR 732.17(b), a State with primacy over its coal regulatory program is required to submit any proposed amendments to its approved State program to OSMRE. OSMRE's role is then to determine, for regulatory program amendments, whether the proposed changes are in accordance with SMCRA and consistent with the Federal regulations as those

terms are defined in 30 CFR 730.5. For more information on a State's and OSMRE's procedures and criteria for approving amendments, please refer to 30 CFR 732.17.

Industry Comment 7: After OSMRE sent a letter to MDEQ on March 28, 2024, an industry commenter noted that it disagreed with OSMRE's preliminary finding that Montana's proposed use of ''long-term or permanent adverse impacts'' did not meet the Federal standards. The commenter explained that, because there is no definition of the term in Federal regulations, Montana's definition cannot ''run afoul'' of Federal law and that OSMRE should not evaluate Montana's definition of ''material damage to the hydrologic balance'' until OSMRE either promulgates a definition of the term in the Federal regulations or Congress defines it. Further, the industry commenter alleged that OSMRE is using an improvised definition in its evaluation of Montana's proposed definition of ''material damage to the hydrologic balance.''

OSMRE Response: As explained in Section III(A) and in response to Industry Comment 4, we do not agree with the contention that, because there is no current definition of ''material damage to the hydrologic balance'' in the Federal regulations, Montana's definition cannot ''run afoul'' Federal standards.

Industry Comment 8: The same industry commenter stated that the proposed amendment's use of the word ''significant'' is in line with the use of ''significant'' for the Federal definitions of material damage in the context of alluvial valley floors and subsidence.

OSMRE Response: Please see the response to State Representative Comment 2.

Industry Comment 9: The same industry commenter did not agree with OSMRE's concern that a ''short-term high pollution event'' could evade enforcement because of Montana's proposed definition. The commenter stated that a ''short-term high pollution event'' would still meet Montana's proposed definition of ''material damage to the hydrologic balance'' because it would cause long-term or permanent damage and that such events would be subject to enforcement under Montana's coal regulations and other Montana laws.

OSMRE Response: We disagree with the contention that a short-term pollution event like the one mentioned in our May 28, 2024, letter to MDEQ would necessarily be considered ''long-term or permanent'' damage under the plain language of the proposed definition of ''material damage to the hydrologic balance'' or that the fact that the proposed definition omits a less-than-long term or permanent event should not matter because it would be covered under other Montana coal regulations and laws. Please see Section III(A) for our discussion as to why the proposed definition is not in accordance with SMCRA or consistent with the Federal regulations.

Industry Comment 10: Industry commenters disagreed with OSMRE's preliminary finding in its March 28, 2024, letter to MDEQ, that Montana's use of ''long-term or permanent'' is too vague. The commenters stated that Montana's definition provides more context than the Federal regulations, which are ''silent'' on the issue, and that Montana added the requirement of ''long-term or permanent exceedance of water quality standards'' to its definition of ''material damage to the hydrologic balance'' to account for situations where water exceeded water quality standards due to historic mining or environmental conditions not caused by the permittee.

OSMRE Response: As stated above, the Federal regulations are not ''silent'' on the issue of ''material damage to the hydrologic balance.'' While there is no single, consolidated Federal definition of the term, the Federal regulations, and decades of experience, provide sufficient context into what the minimum standard for ''material damage to the hydrologic balance'' should be. For further discussion of this issue, please see Section III(A).

Industry Comment 11: Industry commenters stated that Montana's omission of the term ''facilities'' from its definition of ''material damage'' with respect to subsidence seems to be a mistake and that there is no basis to deny the entire section due to the omission of a single word. They suggested that the severability clause was a reason not to deny the entire section for the omission of this one word.

OSMRE Response: Please see our discussion of the omission of the word ''facilities'' in the proposed definition of ''material damage'' with respect to subsidence in Section III(C). We cannot verify that the omission of this term was a mistake as Montana had not provided any clarification about the omission, and we disagree that the omission of a single word cannot be a basis to deny an entire section. As discussed in Section III(C), the omission of ''facilities'' from the definition makes the entire definition inconsistent with the Federal regulations, which means that this section cannot be approved, in whole or in part, because of the missing critical term.

Industry Comment 12: Commenters stated that Montana's proposed changes to the hydrologic information section was intended to clarify who can submit the hydrologic information for the permit application. A commenter clarified their understanding that, unlike the Federal regulations at 30 CFR 780.21(c)(2), Montana's current regulations do not allow the permittee to submit the hydrologic information themselves; thus, Montana's proposal deletes the hydrologic information submittal language to align itself with the Federal regulations. The commenter explained that the changes cannot be reasonably construed to allow permit issuance without the gathering of hydrologic information; thus, OSMRE has no basis to disapprove of the proposed changes in this section.

OSMRE Response: We disagree with the commenter's assessment that the changes cannot be reasonably construed to allow permit issuances without gathering hydrologic information. As discussed in Section III(D), we found that the plain meaning of the provision after deletion did effectually allow permit issuance without hydrologic information being submitted to the regulatory authority. We agree that under Montana's current regulations a permittee is not able to submit hydrologic information collected by themselves to MDEQ, which is a standard more stringent than the Federal regulations at 30 CFR 780.21(c)(2).

Industry Comment 13: This commenter stated that the immediate effective date in House Bill 576 was a valid exercise of the State's sovereignty. The commenter stated that OSMRE's regulations at 30 CFR 732.17(g) are contrary to the principles of federalism and violate SMCRA. They also maintain that 30 U.S.C. 1255(a), which states that ''no State law or regulation . . . shall be superseded by any provision of' SMCRA or its implementing regulations . . . except insofar as such State law or regulation is inconsistent with the provisions of this act[,]'' supports their position. The commenter argues that under SMCRA, a State coal regulation may remain in place until it is found to be inconsistent with SMCRA. In support of this comment, the commenter cites to *Bragg* v. *W.VA. Coal Ass'n,* 248 F.3d 275, 295 (4th Cir. 2001), and the Tenth Amendment to the U.S. Constitution.

OSMRE Response: Please see Section III(E) for our discussion on this topic. We do not agree that OSMRE's regulations at 30 CFR 732.17(g) violate SMCRA or that 30 CFR 732.17(g) goes

against the principles of federalism. The Supreme Court of the United States found that SMCRA does not violate the Tenth Amendment. *Hodel* v. *Va. Surface Mining and Reclamation Ass'n,* 452 U.S. 264 (1981). And 30 U.S.C. 1255 does not allow proposed changes to an approved State program to go into effect before OSMRE reviews those changes to determine whether a State law or regulation is consistent with the provisions of SMCRA. That statute confirms that ''[n]o State law or regulation . . . which *may* become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, *except insofar as such State law or regulation is inconsistent with the provisions of this act.*'' 30 U.S.C. 1255(a) (emphasis added). The use of ''may'' in combination with the exception that changes to a State program must meet SMCRA and Federal regulation requirements demonstrates that SMCRA requires amendments to be approved before being effective.

State Representative Comment 1: A member of the Montana State Legislature commented that that the proposed exception to the ''long-term or permanent exceedance of a water quality standard outside a permit area'' was intended to protect downstream users, as it would require an applicant to demonstrate that there would be no change to the water quality classification for groundwater or beneficial use.

OSMRE Response: We appreciate being informed of at least one member of the legislature's intent for the change to material damage as it relates to the hydrologic balance; however, we must first review the plain language of the proposed amendment and, as described in Section III(A) above, the language of this portion of the proposed amendment is not in accordance with SMCRA or consistent with the Federal regulations. As such, we have denied the portion of the proposed amendment that would have included this phrase.

State Representative Comment 2: The commenter indicated that the definitions for ''material damage with respect to the alluvial valley floor'' and ''material damage with respect to subsidence'' mirror the Federal definitions at 30 CFR 701.5.

OSMRE Response: We agree with the comment that the proposed changes to ''material damage'' in the context of alluvial valley floors substantively mirrors the Federal definition at 30 CFR 701.5; thus, we have approved that portion of the proposed amendment. Please see Section III(B) for OSMRE's discussion on the topic. We disagree with the commenter that the proposed changes to ''material damage'' in the context of subsidence mirror the Federal definition at § 701.5 because it does not include the ''facilities.'' Therefore, we have disapproved that definition. Please see Section III(C) for OSMRE's discussion on this topic.

State Representative Comment 3: Similar to Industry Comment 3, the commenter explains that the current language from section 82–4–222(1)(m) that Montana proposes to remove had incorrectly implied that MDEQ must rely on baseline hydrologic information from another State or Federal agency. The commenter notes that, in practice, MDEQ is solely responsible for gathering such information and including it in its analysis. The commenter considered this change to be entirely clerical and not altering MDEQ's current or future practice.

OSMRE Response: The commenter is incorrect that MDEQ is the only agency responsible for gathering hydrologic information for a permit. Current, section 82–4–222(1)(m) requires that hydrologic information be ''made available from an appropriate federal or state agency.'' This language is substantively identical to the Federal requirements at 30 CFR 780.21(c). While we recognize that MDEQ is an appropriate State agency to gather baseline hydrologic information and may be the primary agency to do so, there is nothing in SMCRA or the Federal agency to suggest that MDEQ is the *only* appropriate State or Federal agency to do so.

State Representative Comment 4: The commenter quoted a portion of the EPA's comment (Administrative Record No. MT–042–07) stating that HB 576 does not appear to impact or alter MDEQ's obligations under the CWA to illustrate that the proposed changes to ''material damage to the hydrologic balance'' would still maintain water quality at the same level as pre-mining conditions.

OSMRE Response: OSMRE notes that the commenter misinterprets the EPA's comment. As explained below in the discussion of EPA's comments, while the EPA did find that the proposed amendment would not impact or alter MDEQ's obligations under the CWA, the EPA also stated that ''[the revisions] likely alter substantive compliance requirements for surface and underground mines in the context of mine permitting in a way that could result in negative impacts on water quality.'' (Administrative Record No. MT–042–07). The EPA's comments only offer confirmation that MDEQ's CWA obligations would still be required to be met under the proposed revisions, but that is not dispositive when determining whether the proposed revisions are in accordance with SMCRA and consistent with the Federal SMCRA implementing regulations.

State Representative Comment 5: The commenter expressed concern that OSMRE held a public hearing on the proposed amendment. The commenter asserted that, in the spirit of SMCRA's cooperative federalism principles, OSMRE should have instead relied on the public record created during the legislative session to pass HB 576.

OSMRE Response: OSMRE disagrees with this comment. The Federal regulations at 30 CFR 732.17(h)(5) specify that OSMRE may hold public hearings for State program amendments and states that comments provided at a public hearing will be considered in OSMRE's decision on a program amendment. Thus, OSMRE's actions were consistent with Federal law.

MDEQ Comments. On April 26, 2024, MDEQ sent us a response to our March 28, 2024, letter. (Administrative Record No. MT–042–35). MDEQ stated that because the proposed amendment was the result of legislative action, MDEQ is unable to submit any revision to address the concerns OSMRE identified and that MDEQ understood that OSMRE intends to proceed, as necessary, with the publication of its decision in the **Federal Register**.

MDEQ commented that it found OSMRE's proposed finding about Montana's proposed definition of ''material damage to the hydrologic balance'' to be inconsistent with OSMRE's application of the term in the Federal program. MDEQ specifically points to a 2016 CHIA for the Peabody Western Coal Company—Kayenta Mining Complex, and OSMRE's statement within the CHIA that ''[t]he term 'material damage to the hydrologic balance' may have various interpretations'' and that ''[t]he Permanent Program Regulations do not define 'material damage' but do define 'hydrologic balance' as 'the relationship between the * * * water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir' (30 CFR 701.5).''

MDEQ states that OSMRE has not produced additional national guidance on CHIAs and the definition of ''material damage to the hydrologic balance'' since this draft document. They state that the definition of ''material damage to the hydrologic balance'' remains at the discretion of the regulatory authority, and OSMRE has

created site specific criteria in their CHIAs.

Finally, MDEQ states that ''material damage to the hydrologic balance'' remains undefined in SMCRA since the Congressional disapproval of the Stream Protection Rule in 2017. MDEQ states further that, because of that lack of a definition, OSMRE's rejection of a more stringent program amendment request from MDEQ is contrary to OSMRE's actual implementation of this issue.

OSMRE Response: OSMRE disagrees with MDEQ's assertion that our findings on the proposed definition of ''material damage to the hydrologic balance'' are inconsistent with our use of the term in the Federal program. MDEQ is correct that OSMRE has not published a definition of the term in the Federal regulations and that OSMRE has stated that the term does not have fixed criteria since ''material damage will vary from area to area and operation to operation,'' (*see* 48 FR 43973, Sept. 26, 1983). The lack of a definition for ''material damage to the hydrologic balance'' in the Federal regulations, however, does not mean that *any* definition will be acceptable. SMCRA and the Federal regulations require that a State program must have rules and regulations that are in accordance with SMCRA and consistent with the Federal regulations. 30 CFR 730.5. This analysis requires a comprehensive comparison between the entire State and Federal programs. While the Federal regulations do not have an official definition for ''material damage to the hydrologic balance,'' that term is used multiple times throughout the Federal regulations. Where the term appears in the Federal regulations and how it affects operations are guidelines for our assessment of the Montana program's proposed definition. Please see Section III(A) to see our detailed assessment of this issue.

Montana Department of Justice (MDOJ). On May 10, 2024, MDOJ sent a letter to OSMRE in response to our March 28, 2024, letter to MDEQ. MDOJ offered their support for comments provided by MDEQ and industry in response to our March 28, 2024, letter. (Administrative No. MT–042–35 and MT–042–36.). Next, MDOJ urged OSMRE to reconsider its preliminary analysis and to promptly approve the MT–042–FOR. MDOJ pointed specifically to the discussion in comments submitted by industry that alleged that OSMRE's concerns with the Montana amendment ignore the text of governing Federal statutory and regulatory provisions and that OSMRE's decision deviates from prior OSMRE decisions. Finally, MDOJ commented that OSMRE must give effect to the bill's severability clause by approving the remaining sections with which OSMRE did not find any issues.

OSMRE Response: For our discussion on the MDEQ letter and industry comments, please see our respective responses above. As for the severability clause, OSMRE structured its approval and disapproval of the provisions in the proposed amendment to accommodate the severability clause and allow individual sections that are found to be consistent with SMCRA and as effective as the Federal regulations to be effective despite the disapproval of other proposed sections.

Federal Agency Comments

On June 6, 2023, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies that have an actual or potential interest in the Montana program (Administrative Record No. MT–042–05). On August 28, 2023, following the extension of the comment period for a further 60 days, we sent an additional request for comments on the amendment (Administrative Record No. MT–042–13). We did not receive any comments.

EPA Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the CWA (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On June 6, 2023, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. MT–042–05). The EPA submitted its comment to us on August 1, 2023. (Administrative Record No. MT–042–07). On August 28, 2023, following the extension of the comment period for a further 60 days, we sent another request for comments on the Amendment (Administrative Record No. MT–042–13). No additional EPA comments were submitted in response to the extended comment period.

In its comment, the EPA interpreted Montana's proposed changes to MCA sec. 82–4–203(32)(a)(ii), ''material damage to the hydrologic balance,'' to mean a violation of a WQS alone is no longer ''material damage.'' Instead, any material damage would only be a long-term or permanent exceedances of a WQS.

Despite the change in definition, the EPA found that they did not have the authority and duty to approve or disapprove the change, as it is not deemed a new or revised WQS under section 303(c)(3) of the CWA. But the EPA did comment that, while the proposed changes are likely not WQS, they do likely alter substantive compliance requirements for coal mines in a way that could result in negative impacts on water quality.

The EPA ended its comment by stating that the proposed changes would likely not impact or alter MDEQ's obligations under the CWA. EPA-approved WQS would remain in effect in Montana, despite the language deletion here, and MDEQ must continue to implement those WQS programs despite the deletion.

OSMRE Response: We appreciate EPAs comments and agree that the proposed changes would likely substantively and negatively alter compliance requirements and water quality, but that MDEQ would still be obliged to comply with all CWA requirements because section 702 of SMCRA provides that nothing in SMCRA can be construed as superseding, amending, modifying, or repealing Federal laws related to water quality. 30 U.S.C. 1292(3). For the reasons explained in our response in Section III(A), we are denying Montana's proposed change to its current definition of ''material damage to the hydrologic balance.''

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 6, 2023, we requested comments on the amendment (Administrative Record No. MT–042–03, and MT–042–04). On August 28, 2023, following the extension of the comment period for a further 60 days, we sent another request for comments on the amendment (Administrative Record No. MT–042–11, and MT–042–12). The Montana SHPO responded on June 15, 2023, to say they have no comment and the ACHP did not comment (Administrative Record No. MT–042–06).

V. OSMRE's Decision

Based on the above findings, we are approving in part and disapproving in part Montana's proposed amendment (MT–042–FOR) sent to us on June 1, 2023 (Administrative Record No. MT–042–01).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 926, that codify decisions concerning the Montana program. In

accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires that a State program must have rules and regulations that are in accordance with SMCRA and consistent with Federal regulations.

VI. Procedural Determinations

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M–94–3), the approval of State program and/or plan amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program and/or plan amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review proposed regulations to eliminate drafting errors and ambiguity; that the agency write its regulations to minimize litigation; and that the agency's regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program amendment that Montana drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications, as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. Montana, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the Montana program submitted and drafted by the State, and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Montana State program that does not include the regulation of Indian lands or regulation of activities on Indian lands as that term is defined in 30 U.S.C. 1291(9). Indian lands are regulated independently under the applicable, approved Federal Indian lands program, with the exception of the Crow Tribe's ''Ceded Strip'' in Montana, which represents a unique and special situation because under the terms of the MOU, the Department of the Interior and Montana agreed to coordinate the administration of applicable surface mining requirements in the Crow Ceded Strip. However, as we are disapproving the majority of the substantive changes made by this proposed amendment, our action will not have any significant effects on the regulation of surface coal mining operations within the Crow Ceded Strip. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), a State program amendment is a not major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on corresponding Federal regulations for which an economic analysis was prepared, and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 926

State regulatory program approval, State program provisions and amendments not approved, Approval of Montana program amendments, and State-federal cooperative agreement.

David A. Berry,

Regional Director, Unified Regions, 5, 7–11.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—Montana

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Amend § 926.12 by adding paragraph (c) to read as follows:

§ 926.12 State program provisions and amendments not approved.

* * * * *

(c) The following portions of the amendment submitted by letter dated June 1, 2023, Administrative Record No. MT–042–01, which proposed changes to the Montana approved program as a result of the Montana Legislature's 2023 passage of a House Bill (HB 576) are not approved: MCA 82–4–203(32)(a) to the extent that it changed the prior definition of material damage as it relates to the hydrologic balance; MCA 82–4–203(32)(c) definition of material damage as it relates to subsidence; MCA 82–4–222(1)(m) hydrologic information requirements.

■ 3. Amend § 926.15 in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 1, 2023	January 15, 2025	MCA 82–4–203(32)(a) existing definition of material damage with respect to protection of the hydrologic balance recodified; MCA 82–4–203(32)(b) adding a definition of material damage with respect to an alluvial valley floor.

[FR Doc. 2025–00333 Filed 1–14–25; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 510, 525, 526, 535, 536, 539, 542, 544, 546, 547, 548, 549, 551, 552, 553, 555, 558, 560, 561, 566, 570, 576, 578, 583, 584, 588, 589, 590, 592, 594, 597, and 598

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this final rule to adjust certain civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This rule is effective January 15, 2025.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855;