§ 882.5888 Transcutaneous electrical nerve stimulator to treat fibromyalgia symptoms.

(a) *Identification.* A transcutaneous electrical nerve stimulator to treat fibromyalgia symptoms is a prescription device that transcutaneously stimulates a patient's sensory nerves through electrodes placed on the skin to treat fibromyalgia symptoms.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. This testing must include:

(i) Characterization of the electrical stimulation parameters, including the following: waveforms; output modes; maximum output voltage and maximum output current (at 500Ω, 2kΩ, and 10kΩ loads); pulse duration; frequency; net charge per pulse; maximum phase charge, maximum current density, maximum average current, and maximum average power density (at 500Ω);

(ii) Characterization of the impedance monitoring system; and

(iii) Characterization of electrode performance, including the electrical performance, adhesive integrity, shelf life, reusability, and current distribution of the electrode surface area.

(2) The patient-contacting components of the device must be demonstrated to be biocompatible.

(3) Performance testing must demonstrate electrical, thermal, and mechanical safety along with electromagnetic compatibility of the device in the intended use environment.

(4) Software verification, validation, and hazard analysis must be performed.

(5) Labeling must include the following:

(i) Recommended treatment regimes, including but not limited to, frequency and duration of use, application site(s), and typical sensations experienced during treatment;

(ii) A shelf life for the electrode and reuse information;

(iii) Summaries of the electrical stimulation parameters and device technical parameters (including any wireless specifications); and

(iv) Instructions on how to correctly use and maintain the device, including all user-interface components.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–10675 Filed 5–28–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–048–FOR; Docket No. OSM–2025–0008; S1D1S SS08011000 SX064A000 266S180110; S2D2S SS08011000 SX064A000 26XS501520]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is APPROVING an amendment to the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana submitted this proposed amendment to OSM on its own initiative in response to a State law passed by the Montana Legislature House Bill 587 (HB 587). The proposed amendment provides a new definition of ''Material damage'' with respect to the hydrologic balance, alluvial valley floors, and subsidence. It also creates an option for a permit applicant to provide self-collected information related to its determination of probable hydrologic consequences, if an appropriate Federal or State agency cannot provide such information. Finally, HB 587 includes contingencies that apply to the proposed amendment but are not codified into the Montana Code Annotated (MCA): a severability clause, a contingent voidness clause, an effective date clause, and a retroactive applicability clause.

DATES: The effective date is June 29, 2026.

FOR FURTHER INFORMATION CONTACT: Attn: 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 May 15, 2025 (Administrative Record No. MT–048–01), 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 May 15, 2025. Montana submitted the proposed amendment to us, on its own volition, after the Montana legislature passed HB 587 during the 2025 legislative session. HB 587 amends the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as well as sections 82–4–203 and 222 of the MCA.

Specifically, Montana proposes changes to its definition of ''Material damage,'' at 82–4–203(35) of the MCA. Montana proposes to remove the previous definition and create three sub-definitions. The first, paragraph (a), defines ''Material damage . . . with respect to the hydrologic balance outside the permit area,'' as a quantifiable adverse impact from coal mining and reclamation operations on the quality and quantity of surface or groundwater. The adverse impact must preclude any existing or reasonably foreseeable use of water outside the permit area. It further defines a ''quantifiable adverse impact'' as an effect that can be quantified and measured to a significant degree of confidence. Last, it states that ''existing or reasonably foreseeable uses of water'' are those beneficial uses recognized in title 75, chapter 5, part 3 of the MCA.

Next, in paragraph (b), Montana defines ''Material damage . . . with

respect to an alluvial valley floor'' as degradation or reduction by coal mining and reclamation operations to water quality or quantity supplied to the alluvial valley floor that significantly decreases its ability to support agricultural activities.

And in paragraph (c), Montana defines ''Material damage . . . with respect to subsidence caused by underground mining'' as a functional impairment to surface lands, features, structures, or facilities; a physical change that has significant adverse impact on an affected land's ability to support any current or reasonably foreseeable uses or causes significant loss to production or income; or a significant change in the condition, appearance, or utility of a structure or facility.

In addition to the changes to ''Material damage,'' Montana proposes changes to its permit application requirements in 82–4–222(1)(m) of the MCA. Currently, an operator can receive necessary hydrologic and geologic information from an appropriate Federal or State agency to determine probable hydrologic consequences. Under Montana's proposal, an operator may use information collected on their own when the necessary information is not available from a Federal or State agency.

Last, HB 587 adds four contingencies to the proposed changes of §§ 82–4–203 and 222 that are not codified into the MCA but apply to the sections amended by the legislation. These provisions cover severability, contingent voidness, effective date, and retroactive applicability.

We announced receipt of the proposed amendment in the August 4, 2025, **Federal Register** (90 FR 36407). We received 373 written comments on the proposed rule.

III. OSM's Findings

OSM 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.

A. Montana Code Annotated (MCA) 82–4–203(35)(a)

For section 82–4–203(35)(a), Montana proposes to replace its definition of ''Material damage'' as it relates to impacts to the hydrologic balance from surface and underground coal mining operations. Current section 82–4–203(35) 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 OSM to be in accordance with SMCRA and consistent with the Federal implementing regulations when OSM conditionally approved Montana's Permanent coal program. 45 FR 21560 (Apr. 1, 1980).

Montana's proposed revision would define ''Material damage . . . with respect to the hydrologic balance outside the permit area'' as: ''a quantifiable adverse impact from surface coal mining and reclamation operations on the quality or quantity of surface water or ground water that precludes an existing or reasonably foreseeable use of surface water or ground water outside the permit area. A quantifiable adverse impact is an effect that can be quantified and measured to a significant degree of confidence. Existing or reasonably foreseeable uses of surface water or ground water are those beneficial uses recognized in the classification of State waters pursuant to Title 75, chapter 5, part 3.''

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 mine site 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 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, OSM 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 OSM'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. OSM 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.

Taken all together, 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(35)(a) are in accordance with SMCRA and consistent with the Federal regulations.

First, Montana's adoption of OSM's Federal and Indian Lands program definition in its proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area,'' is in accordance with SMCRA and consistent with the Federal regulations. Montana proposes to define Material damage as ''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.'' This is the exact definition that OSM uses for its Federal and Indian lands programs in Cumulative Hydrologic Impact Assessments (CHIAs). While this is not a definition a State must adopt, as it only applies within the Federal and Indian Land Programs, it is a definition that matches SMCRA and Federal regulations guidelines for ''material damage to the hydrologic balance outside the permit area.'' Thus, Montana's proposed adoption of OSM's Federal and Indian Lands program definition of material damage with respect to the hydrologic balance outside the permit area is in accordance with SMCRA and consistent with the Federal regulations.

Second, Montana's proposed definition of ''quantifiable adverse impact'' is in accordance with SMCRA and consistent with the Federal regulations. Montana defines ''quantifiable adverse impact'' as ''an effect that can be quantified and measured to a significant degree of confidence.'' OSM's Federal and Indian Lands program does not further define ''quantifiable adverse impact,'' but we can assess from the plain text of the definition that a relevant party must prove with scientific data, as opposed to anecdotal evidence, that adverse impact has or has not occurred

As discussed above, Montana's definition of ''Material damage'' must be in accordance with State and Federal water quality standards (WQS) including those set by the EPA under the Clean Water Act, and Montana has created a WQS program that is in accordance with and approved by the EPA. Under this program amendment, any effect that can be quantified and measured to a significant degree of confidence would be material damage to the hydrologic balance outside the permit area. How MDEQ chooses to interpret how the effect is ''measured to a significant degree of confidence'' is up to that agency. Simply defining ''quantifiable adverse impact'' as ''an effect that can be quantified and measured to a significant degree of confidence,'' is in accordance with SMCRA and consistent with the Federal regulations.

Third, Montana's proposed definition of ''existing and reasonably foreseeable uses'' is in accordance with SMCRA and consistent with the Federal regulations. Montana defines ''existing and reasonably foreseeable uses'' as ''those beneficial uses recognized in the classification of state waters pursuant to Title 75, chapter 5, part 3'' of the MCA. The definition used by OSM's Federal and Indian Lands program does not further define ''existing and reasonably foreseeable uses,'' but State

Representative Parry explained in his September 3, 2025 letter that the proposed definition of ''existing or reasonably foreseeable uses'' within the definition of ''Material damage to the hydrologic balance'' was derived from a Montana regulation, 75–5–301(1) MCA, which states: ''Consistent with the provisions of 80–15–201 and this chapter, the department shall: (1) establish the classification of all state waters in accordance with their present and future most beneficial uses.'' He continued and stated that the Montana Department of Environmental Quality (MDEQ) had already established these classifications in its Administrative Rules: ARM 17.30.607 and 17.30.616. State Representative Parry noted that designating the uses of waters is wholly within MDEQ's authority pursuant to the Federal Clean Water Act, as MDEQ is responsible for reviewing, establishing, and revising water quality standards under 40 CFR 131.4(a), and these standards, including uses, are reviewed and approved by the EPA. Through this definition of ''existing or reasonably foreseeable uses,'' Montana is integrating its coal program, approved by OSM, with its Clean Water Act program, approved by the EPA. And as established by OSM in the September 26, 1983 preamble promulgating hydrologic balance rules, OSM intentionally established basic permitting and performance standards so that State and Tribal programs have the opportunity to customize their rules to their particular mining situations. 48 FR 43956 (Sept. 26, 1983). Montana has met the basic Federal standards, and incorporating its state water rules into its definition of ''material damage to the hydrologic balance'' is well within the State's powers as they do not conflict with the Federal regulations. Thus, Montana's proposed definition of ''existing and reasonably foreseeable uses'' is in accordance with SMCRA and consistent with the Federal regulations.

B. MCA 82–4–203(35)(b)

Montana's proposed changes to section 82–4–203(32)(b) of the MCA 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[.]'' Montana previously proposed these exact changes in its June 1, 2023, amendment submission. OSM approved Montana's changes to this section but denied other areas of the proposed amendment. *See* 90 FR 3673, 3687 (January 15, 2025). Because Montana is proposing the same changes that were previously approved January 15, 2025, we find the changes are in accordance with SMCRA and consistent with the Federal regulations, and we are approving the changes again, with the same reasoning as is detailed at 90 FR 3673, 3677 (Jan. 15, 2025).

C. MCA 82–4–203(35)(c)

Montana's proposed changes to section 82–4–203(33)(c) of the MCA are in accordance with SMCRA and consistent with the Federal regulations. Montana proposes a definition for what would be considered material damage with respect to subsidence. This includes ''(i) a functional impairment of surface lands, features, structures, or facilities; (ii) a 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) a significant change in the condition, appearance, or utility of a structure or facility from its presubsidence condition.'' This is nearly identical to the Federal definition of ''material damage'' for subsidence at 30 CFR 701.5, and it has no substantive differences from the Federal definitions. Thus, Montana's proposed changes to MCA section 82–4–203(33)(c) are in accordance with SMCRA and consistent with the Federal regulations.

D. MCA 82–4–222(1)(m)

Montana's proposed changes to MCA section 82–4–222(1)(m) are in accordance with SMCRA and consistent with the Federal regulations. Montana proposes that for hydrologic information needed to determine an applicant's Probable Hydrologic Consequences (PHC), Montana may use data collected by the operator to make the PHC determination in the event the appropriate Federal or State agency does not have that information available. In its current form, Montana may only use hydrologic information from an appropriate Federal or State agency to make its PHC determination for an applicant; there are no exceptions. By comparison, the Federal regulations at 30 CFR 780.21(c)(2) allows the regulatory authority to use information submitted by the applicant in its PHC determination, if that information is not available from an appropriate State or Federal agency. Because the proposed Montana regulation is nearly identical with and has no substantive differences to the Federal regulations at 30 CFR 780.21(c)(2), we find that proposed changes to section 82–4–222(1)(m) are consistent with SMCRA and the Federal regulations.

E. Sections 3, 4, 5, and 6 of HB 587

HB 587 also added contingencies that are not codified into the MCA but that affect the amended parts of the MCA.

1. Section 3. Severability

Section 3 of HB 587 states that if any part of HB 587 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 regulation at 30 CFR 732.17(h)(7) requires 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.

2. Section 4. Contingent Voidness

Section 4 of HB 587 states that if the Secretary of the Interior disapproves of any provision of HB 587 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 587, the Federal regulation gives 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: Effective Date

Section 5 of HB 587 states that its provisions are ''effective on passage and approval.'' Section 5 of HB 587 does not specify who is providing the ''approval'' that triggers the effective date. SMCRA and the Federal regulations 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). The Federal regulations further specify that all decisions approving or not approving a State program amendment must be published in the **Federal Register** and will be effective upon publication unless the notice specifies otherwise. 30 CFR 732.17(h)(12).

By looking at the text of HB 587 preceding Section 5, OSM interprets the term ''approval'' to mean approval by

the OSM Director. Section 3 speaks to the need for Secretarial approval but provides that if a provision is disapproved, that portion of the HB 587 is severed from the approved portions of the bill. In Section 4, HB 587 states that any provision of HB 587 that the Secretary of the Interior ''disapprov[es]'' shall be void. Taken together, it is appropriate to read ''approval'' as used in Section 5 of HB 587 as referring to action taken consistent with the regulatory review and approval process by the Secretary of the Interior, as delegated to the OSM Director. This interpretation is also consistent with 30 CFR 732.17(g), which refers to approval by the Director of OSM and states that ''[n]o such change to [State] laws or regulations shall take effect for purposes of a State program until approved as an amendment.'' Thus, OSM interprets Section 5 in a way that is both supported by the surrounding statutory text of HB 587, and leads to consistency with SMCRA.

Notwithstanding OSM's interpretation, should the drafters or implementers of HB 587 interpret Section 5 as becoming effective upon approval by an entity other than the OSM Director, that interpretation would conflict with SMCRA and the Federal regulations. No change to State programs can be implemented or become effective prior to approval by the Director. 30 CFR 732.17(g). Thus, the effective date of HB 587 is June 29, 2026.

4. Section 6: Retroactive Applicability

Section 6 of HB 587 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 587. Section 6 of HB 587 attempts to make the proposed changes to sections 82–4–203(35) and 82–4–222(1)(m) apply retroactively to pending issues that have not been decided on or after the effective date of HB 587. As with the attempt to make changes to HB 587 effective immediately, this section is contrary to SMCRA and the Federal regulations. Specifically, the Federal regulations at 30 CFR 732.17(g), which mandate that no changes to laws will take effect until OSM approves the amendment, and section 723.17(i)(12), which states that all decisions of the Secretary to approve or disapprove program amendments must be published in the **Federal Register**. The Administrative Procedure Act (APA) generally requires a 30-day delay before a rule becomes effective. 5 U.S.C. 553(d).

Furthermore, under section 405(a) of SMCRA, ''[n]o State law or regulation in effect on the date of the enactment of [SMCRA], or which may become effective thereafter, shall be superseded by any provision of [SMCRA] or any regulation pursuant thereto, *except insofar as such State law or regulation is inconsistent with the provisions of [SMCRA].*'' 30 U.S.C. 1255(a) (emphasis added). Montana declares that HB 587 applies retroactively within the meaning of 1–2–109 of the MCA, which states ''[n]o law contained in any of the statutes of Montana is retroactive unless expressly so declared.'' Despite Montana declaring that the amendments to 82–4–203(35) and 82–4–222(m)(1) apply retroactively to select proceedings, as discussed above, retroactive application is contrary to SMCRA and the Federal regulations. Thus, SMCRA and the Federal regulation supersede 1–2–109 of the MCA in this instance, and the amendments to 82–4–203(35) and 83–4–222(m)(1) cannot be applied retroactively.

IV. Summary and Disposition of Comments

OSM asked for initial public comments on the amendment during a public comment period that ended on September 3, 2025. OSM received 373 written comments during the comment period. (Administrative Record No. MT–048–08 through MT–048–20).

Due to the large number of comments, substantially similar comments and points have been consolidated to avoid redundancy. 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 a transition to renewable energy, general statements about the Montana Constitution, general statements about OSM's previous denial of HB 576 and prior legislative efforts, general statements about the public's opposition to HB 587, 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/.*

A. 82–4–203(35)(a) Material Damage to the Hydrologic Balance

1. General Comments on the Definition of ''Material Damage to the Hydrologic Balance''

Comment: A large group of 300+ commenters opined that the proposed definition of ''Material damage to the hydrologic balance'' undermines SMCRA at 30 U.S.C. 1202(b) and its goal to ensure mining, agriculture, and landowners can coexist, as it would give mining companies more leeway to damage the hydrologic balance for neighboring property owners, which would strip property right protections from those landowners.

OSM Response: OSM disagrees with the commenters; Montana's proposed definition for ''Material damage to the hydrologic balance'' is in accordance with SMCRA and consistent with the Federal regulations. 30 U.S.C. 1202(b) states that part of SMCRA's purpose is to ''assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations[.]'' Montana is required to prevent ''Material damage . . . with respect to the hydrologic balance outside the permit area.'' The proposed definition recognizes the beneficial water uses of neighboring water users, including surface landowners and other persons with a legal interest, and would find material damage if those uses were precluded by pollution caused by coal mine operations. Please see our full discussion on this topic in section III(A).

Comment: Multiple commenters stated that Montana's proposed removal of language that recognizes exceedances of water quality standards as ''Material damage to the hydrologic balance'' violates SMCRA and is less protective than the Federal regulations. The commenter points to SMCRA at 30 U.S.C. 1265(b)(10)(B)(i), which prohibits mine drainage in excess of requirements set by applicable State or Federal law, as well as OSM's statement in our January 15, 2025, denial of a prior Montana amendment where OSM states ''[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. . . .'' And also ''Because a violation of a WQS is an established criterion for determining if ''Material damage . . . with respect to the hydrologic balance outside the permit area'' has occurred, any regulation proposed by Montana must be in accordance with and consistent with this Federal standard.'' 90 FR 3673, 3676 (Jan. 15, 2025).

OSM Response: OSM disagrees with the commenters that Montana's proposed definition removes the requirement that an exceedance of a WQS be considered ''Material damage

. . . with respect to the hydrologic balance outside the permit area.'' Under Montana's proposed definition, material damage will be found where there is a quantifiable adverse impact that precludes an existing or reasonably foreseeable water use. Montana further defines an ''[e]xisting or reasonably foreseeable uses'' of water as ''those beneficial uses recognized in the classification of state waters pursuant to Title 75, chapter 5, part 3 [of the MCA].'' As discussed further in section III(A), Title 75, Chapter 5 of the MCA contains the Montana Water Quality Act, and Montana's classification of State waters in Title 75, chapter 5, part 3 includes WQS that are set in line with this EPA approved program. If a WQS is exceeded under these rules, a beneficial use would no longer be available, an existing or reasonably foreseeable use of State waters would be precluded, and ''Material damage to the hydrologic damage'' would occur. Thus, Montana's proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' recognizes that an exceedance of a WQS is Material damage.

Comment: A commenter stated that the proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' is contrary to SMCRA because it omits any protection of water rights. They specified that 30 U.S.C. 1258(a)(13)(B) requires an assessment of water rights in the permitting process, and Montana's proposed removal of water rights from its definition removes any means for regulators to ensure protection of water rights at the permitting stage.

OSM Response: OSM disagrees with the commenter that the proposed definition's lack of reference to water rights makes the Montana program inconsistent with SMCRA and the Federal regulations. While Montana is removing the term ''water rights'' in this definition, another area of the Montana program fulfills SMCRA's requirement to consider ''water rights.'' 30 U.S.C. 1258(a)(13)(B) requires that each reclamation plan submitted as part of a permit application must include a detailed description of measures to be taken to ''assure the rights of present users to such water.'' Montana's counterpart regulations for protecting the ''rights of present user to such water'' are contained within section 82–4–222 of the MCA. Section 82–4–222(1)(m) of the MCA requires an applicant to conduct a determination of the PHC that considers the impact the operation will have on beneficial uses of water in and adjacent to the permit area, and section 82–4–222(1)(n) requires an applicant to plan for monitoring groundwater and surface water for protection of the hydrologic balance. While Montana does not use the term ''water rights'' in its regulations, ''beneficial uses of water'' is a reference to water rights. At section 85–2–102(5)(a), Montana defines ''Beneficials use'' as ''a use of water for the benefit of *the appropriator,* other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses.'' (Emphasis added). At section 85–2–102(2), ''Appropriation right'' is defined as ''[having] the same meaning as 'water right . . . .''' Montana requiring an applicant to plan for an operation's effects on ''beneficial uses'' is requiring an applicant to consider the beneficial uses of any potentially affected water rights holder, which is equivalent to the SMCRA requirement that an applicant consider water rights. Thus, Montana removing reference to ''water rights'' from its definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' is in accordance with SMCRA and consistent with the Federal regulations.

Comment: A couple of commenters stated that the proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' is in accordance with SMCRA and its allowance to ''develop a definition based on regional environmental and regulatory conditions'' (quoting OSM, *Cumulative Hydrologic Impact Assessment of the Pacific Coast Coal Company, John Henry No. 1 Mine,* p. 2 (January 2014)). They opined that the proposed definition was created to address the specific needs of Montana while balancing protection of the environment and agricultural productivity with the Nation's need for coal as an essential energy source.

OSM Response: OSM is approving the amendment and agrees with the commenters that Montana has created a definition that is tailored to support its local hydrologic needs. Please see OSM's full discussion of this topic in section III(A).

Comment: A few commenters opined that Montana's definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' should be approved because its nearly identical to the definition OSM has been using internally since at least 2014.

OSM Response: OSM has approved the amendment and agrees with the commenters that Montana's proposed a definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' is substantially similar to the definition used in our CHIAs for Federal and Indian lands. While there is no codified Federal definition for ''Material damage to the hydrologic balance,'' Montana's proposed definition is consistent with SMCRA and the Federal regulations. Please see OSM's full discussion of this topic in section III(A).

2. ''Preclusion''

Comment: A large group of 300+ commenters opposed the requirement that a beneficial use of water must be precluded to be considered ''Material damage . . . with respect to the hydrologic balance outside the permit area.'' They stated that the preclusion requirement would violate SMCRA and the Federal regulations, in particular 30 CFR 816.41. They opined that Montana's proposed definition would be a loophole that would allow a mining operation to contaminate water resources without consequence so long as minimal water use remains, and one of these commenters was concerned that because all the receiving waters for Montana's coal mines are already listed as impaired water bodies, a water use would not be deemed precluded until the stream can no longer support aquatic life.

OSM Response: OSM disagrees with these commenters that Montana's proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' is a loophole for water pollution so long as minimal beneficial use remains. As proposed, Montana's definition would find material damage where an existing or reasonably foreseeable use of water is precluded. Montana further defines ''existing or reasonably foreseeable uses'' as those beneficial uses recognized under Title 75, chapter 5, part 3 of the MCA. In the Administrative Rules of Montana (ARM) at Title 17, chapter 30, sub-chapters 6 and 10, MDEQ lists the water-use classifications and their standards. Every body of water within Montana's jurisdiction is assigned a classification based on the water body's characteristics. There are 16 classifications of surface waters and 4 classifications of groundwaters, and each classification lists the types of beneficial uses that must be supported and the water quality standards that must be followed. Beneficial uses like stock-watering, which would fall under ''agriculture'' or ''drinking water for livestock and wildlife'' in the rules is

protected within 14 of the surface water classifications and 3 of the groundwater classifications. It appears the commenters are concerned that their ability to use water for stock-watering must be completely prevented in any way to be considered precluded, but Montana's proposed definition for ''Material damage . . . with respect to the hydrologic balance outside the permit area'' in context with the MCA and ARM show that the use must only be precluded within its classification. For example, if a neighboring rancher used water for stock watering classified under Class I groundwater, and coal mining pollution violated water quality standards for Class I groundwater, then any of the beneficial uses listed for a Class I groundwater would be prevented, resulting in material damage. Thus, under Montana's proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area,'' a water use would not need to be precluded to the point of not supporting aquatic life for material damage to be found.

Comment: The same group of 300+ commenters stated that the preclusion requirement would put the economic burden on taxpayers and local governments, including farmers, ranchers, and tourism services who are highly dependent on clean water for their livelihoods, and who would bear the brunt of the water degradation. One of these commenters gave the example that, for ranchers and farmers, while water polluted by neighboring coal mine operations may still be ''beneficial'' enough to be used to keep their cattle and crops alive, the degradation in quality may cause health issues that will in turn impact quality and profit margins.

OSM Response: OSM disagrees with the commenters that Montana's proposed definition of material damage to the hydrologic balance outside the permit area would put an economic burden on taxpayers and local governments. The requirement for MDEQ and coal operators to prevent ''Material damage . . . with respect to the hydrologic balance outside the permit area'' still exists in the Montana Code, and, as discussed above, degradation of water quality to the point of not meeting the classification requirements, as contained in Title 17, chapter 30, sub-chapter 6 of ARM, is considered preclusion of a beneficial use. Stock-watering would not need to be prevented all together to be considered preclusion of a beneficial use, which is included in Montana's definition of material damage to the hydrologic balance outside the permit area. Instead, in this example the beneficial use would need only to be precluded within its classification.

3. ''Quantifiable Adverse Impacts''

Comment: Multiple commenters who were opposed to Montana's proposed amendment stated that the proposed changes rely on a system with complex calculations and statistical analysis that would make coal operators and State regulators less accountable and less transparent. One of these commenters stated that because Montana's proposed use of a ''quantifiable adverse impacts'' standard does not specify the degree of confidence needed, it could require the public to demonstrate a preponderance of evidence standard (50.1%) or it could require a virtual certainty standard (99%) that material damage had occurred to enforce the material damage standard. They stated that this gives the regulators unlimited discretion to decide the level of confidence required, and if the regulators implemented the 99% confidence standard, then it would be virtually impossible to prove material damage.

OSM Response: OSM disagrees with the commenters that the proposed changes rely on complex statistical analysis that favors coal operators and State regulators. The bill does not propose, and we are not approving, any particular method to determine whether an effect that can be ''quantified and measured to a significant degree of confidence.'' As noted in a comment by State Representative Parry, the sponsor of the bill, one way MDEQ may apply this definition is to use the publicly available EPA guidance for ''statistical significance,'' which is what he stated he intended. (Administrative record no. MT–048–17, citing ''Basic Principles & Issues: Additional Information on Interpreting Statistics,'' EPA, *https://www.epa.gov/caddis/basic-principles-issues-2,* last visited May 11, 2026).

However, because this standard was not incorporated into the statute, it is not controlling, although it is worth noting that the author of the proposed changes intended for the statistical analysis to be consistent with EPA guidance for ''Confidence Intervals.'' (Administrative record no. MT–048–17). The EPA guidance for ''Confidence Intervals'' (Administrative record no. MT–048–17) currently uses a 95% standard where ''(1) There is a 95% chance of the true value of the parameter falling within the interval; (2) Values outside the interval can be rejected on the basis of a two-sided statistical test with alpha 5%.'' In this scenario, a 95% confidence interval would not be the regulators determining that they are 95% confident material damage has occurred, instead it would give a range of numbers that would, if repeated with multiple data samplings, are 95% likely to contain the true value of the desired statistical parameter, such as a population mean.

Furthermore, it should be noted, if adopted by MDEQ, this standard would apply equally to operators when they are presenting evidence in their permit application that their operation will not cause material damage to the hydrologic balance outside the permit area. MCA section 82–4–227(3)(a).

Comment: One commenter stated that Montana's proposed definition would remove current language with clear standards for measuring impacts to the hydrologic balance and replacing them with unreasonable and unspecified metrics. The commenter opined that the proposed requirement that ''Material damage . . . with respect to the hydrologic balance outside the permit area'' must be proven through ''quantifiable adverse impact. . . . an effect that can be quantified and measured to a significant degree of confidence'' is inconsistent with SMCRA and the Federal regulations. The commenter stated that this standard ''provides excessive subjective discretion and established a standard that would be onerous to prove.'' The commenter citied to *Ohio River Valley Env't Coal., Inc.* v. *Norton,* No. CIV.A. 3:04–0084, 2005 WL 2428159, at *3 (S.D.W. Va. Sept. 30, 2005), *aff'd sub nom. Ohio River Valley Env't Coal., Inc.* v. *Kempthorne,* 473 F.3d 94 (4th Cir. 2006), a case where a West Virginia definition of ''Material damage to the hydrologic balance'' was invalidated by the court for having vague and overly subjective criteria. The commenter stated that Montana's proposed definition is also vague and subjective, as ''significant degree of confidence'' does not have a definition, and the degree of statistical confidence can be easily manipulated.

OSM Response: OSM disagrees with the commenter that there are not clear standards for measuring hydrologic balance impacts. As discussed above, the plain language in Montana's statute indicates that scientific data is required, as opposed to anecdotal evidence, that an adverse impact has or has not occurred. Further, State Representative Parry asserted in this comment that he developed the definition for ''quantifiable adverse impacts'' so that a methodology such as the EPA guidance for ''Confidence Intervals.'' (Administrative Record No. MT–048–17) could be used. If MDEQ chooses to adopt them, they would be clear and

accessible standards. Furthermore, OSM disagrees that the finding in *Ohio River Valley Env't Coal., Inc.* v. *Norton* applies in this situation. As is inherent in the name of the term, ''quantifiable adverse impact'' requires MDEQ to use objective criteria, and the definition of that term elaborates that the quantified impact must be able to be measured to a significant degree of confidence. While that gives MDEQ some appropriate level of discretion to determine if it has a significant degree of confidence, it is clear that they must have a higher level of confidence than reasonable probable or another known standard that is typically applied. Moreover, MDEQ could use the guidelines for statistical analysis suggested by State Representative Parry. That EPA guidance offers techniques to prevent data manipulation in the statistical analysis process. (EPA, *https://www.epa.gov/caddis/basic-principles-issues-2,* last visited December 17, 2025). Thus the proposed definition of ''quantifiable adverse impact'' is not overly vague or prone to abuse.

Comment: One commenter stated that the ''quantifiable adverse impacts'' standard would put the burden of proof on the public, directly conflicting with 30 U.S.C. 1260(b) of SMCRA which requires the permittee to affirmatively demonstrate that material damage will not occur.

OSM Response: OSM disagrees with the commenter; Montana's proposed definition does not shift the burden of proving no material damage will occur from the permittee to the public. Per section 82–4–227(3)(a) of the MCA, operators are required to provide an assessment of probable cumulative impact and must show that the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area. Montana's proposed rule still puts the burden of proof on the operator for permit applications, as the operator must be the one to show that there will be no ''quantifiable adverse impacts.''

Comment: A commenter questioned the ''significant degree of confidence standard'' and how MDEQ's current sampling practices would affect material damage findings in Montana. The commenter opined that MDEQ would need to require significant and repeated sampling to meet this new standard, and MDEQ's current quarterly sampling is insufficient to detect to a degree of statistical significance for large pollution increases. Furthermore, under the proposed standard a single measurement of extremely high pollution levels could be statistically erased as an outlier by being deemed ''not statistically significant.'' The commenter stated that this defeats the purpose of sampling, which is to ensure compliance. They opined that under the proposed rule a single sampling or even multiple sampling events identifying violations of water quality standards might not be deemed statistically significant, which is contrary to the Federal requirement that water quality standards serve as material damage criteria.

OSM Response: OSM disagrees with the commenter. MDEQ's sampling techniques are consistent with the Federal regulations. MDEQ requires monitoring and sampling of groundwater and surface water (ARM sections 17.24.645 and 17.24.646, respectively) and must sample the water to such a frequency as is necessary to adequately identify changes in water quality and quantity from mining operations. If it is demonstrated that a site needs more frequent water monitoring, including sampling, MDEQ can adjust accordingly. Furthermore, a WQS violation is still considered material damage under Montana's rule, as it under the regulations, but proving WQS violation still requires procedures and analysis. For example, the EPA sets ''Guidelines Establishing Test Procedures for the Analysis of Pollutants'' at 40 CFR part 136 and devised a ''Stressor Identification Guidance Document,'' US EPA, December 2000, (*https://www.epa.gov/sites/default/files/2018-10/documents/stressor-identification-guidance-document.pdf,* last visited May 11, 2026), which gives guidance for properly identifying WQS violations. The EPA created the ''Casual Analysis/Diagnosis Decision Information System'' or CADDIS using the framework from this document. CADDIS is often used by States, Tribes, and others as guidance for sampling and analysis procedures. In his comment, State Representative Parry stated that he created the definition for ''quantifiable adverse impact'' in line with CADDIS guidance for confidence intervals. (Administrative record no. MT–048–17, citing ''Basic Principles & Issues: Additional Information on Interpreting Statistics,'' EPA, *https://www.epa.gov/caddis/basic-principles-issues-2,* last visited May 11, 2026). Thus, Montana's proposed requirement of statistical significance to prove a ''quantifiable adverse impact,'' including a WQS violation, is in line with the Federal regulations.

Comment: In a September 3, 2025 letter commenting on this proposed program amendment, the author of Montana's definition, Montana House Representative Parry, explained that his intent for including ''quantifiable adverse impact'' within the definition of ''Material damage to the hydrologic balance'' was to follow EPA guidance that ''Confidence intervals, . . . , can be used to analyze data without assumptions about the relative burden of proof for different outcomes.'' State Representative Parry credited the EPA Casual Analysis/Diagnosis Decision Information System (CADDIS) website for guiding his creation of the ''quantifiable adverse impacts'' definition. (Administrative record no. MT–048–17, referencing ''Basic Principles & Issues: Additional Information on Interpreting Statistics,'' EPA, *https://www.epa.gov/caddis/basic-principles-issues-2,* last visited May 11, 2026). CADDIS was created by the EPA to support State, Tribal, and other water programs in sampling and analyzing water quality data.

OSM Response: OSM appreciates State Representative Parry's insights and background on the program amendment. While we understand the intent of this State Representative may have been to follow the EPA guidance, the EPA guidance is not incorporated by reference into the statute and is not part of the proposed amendment that we are reviewing.

Comment: A few commenters, including U.S. Senator Daines of Montana, opined that the proposed amendment clarifies the coal mining permitting and operational process by requiring the material damage determination to be based on demonstratable, measurable impacts. One of those commenters specified further that Montana's proposed definition of ''quantifiable adverse impact'' is appropriate to be defined as ''an effect that can be quantified and measured to a significant degree of confidence'' because (1) hydrologic impacts involve numerous and variable factors and (2) a finding of material damage carries serious consequences, potentially including denial of a permit or cessation of mining operations. They stated that by requiring material damage to be found through demonstratable, tangible, and measurable facts, MDEQ is able to ensure environmental protection and regulatory certainty when making its findings.

OSM Response: OSM agrees with the commenters that Montana's proposed definition requires material damage to be assessed on demonstratable and measurable impacts. Please see further discussion of this topic in section III(A).

4. ''Existing or Reasonably Foreseeable Uses''

Comment: Multiple commenters stated that Montana's proposed limitation of adverse impacts to ''existing or reasonably foreseeable use of surface water or ground water'' is inconsistent with SMCRA, and they claimed that OSM had previously rejected a similar provision to the Montana program. The commenters cited OSM's discussion at 70 FR 8002, 8004 (Feb. 16, 2005) where OSM found Montana's 2003 proposed definition of ''hydrologic balance'' would only consider dynamic hydrologic relationships to the extent they relate to uses of the land and water, which would result in components of the hydrologic regime not being identified, protected, or monitored unless those components relate to postmining uses of land and water. The commenters stated there is a parallel between the rejected 2003 definition and Montana's proposed definition here, as Montana's limiting of material damage to ''existing or reasonably foreseeable uses[s]'' fails to protect the hydrologic balance as a ''natural resource.'' One of these commenters opined further that Montana's designated beneficial uses are independent of existing or reasonably foreseeable uses, thus the inconsistency makes the proposed definition inconsistent with SMCRA.

OSM Response: OSM disagrees with the commenters that our denial of Montana's 2003 proposed definition of ''hydrologic balance'' requires us to deny Montana's 2025 proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area.'' Unlike the 2003 definition of ''hydrologic balance,'' Montana's proposed definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' is not related to or reliant on postmining land use. ''[E]xisting or reasonably foreseeable uses of water'' is related to Montana's classification of beneficial uses, not how the water will be used for postmining land use.

Furthermore, OSM disagrees with the commenter that the definition separates Montana's designated beneficial uses from its proposed definition of ''existing or reasonably foreseeable uses.'' As State Representative Parry explained in his comment, the definition was designed to ensure consistency between the Montana Surface and Underground Mining Reclamation Act and Montana Water Quality Act and clarified that the classification of State waters mentioned in the proposed definition reference the water classifications in ARM sections 17.30.607 and 17.30.617. (Administrative Record No. Mt-048–17).

Comment: One commenter opposed the proposed definition because it did not consider the ''beneficial'' water quality standards that local landowners valued and enjoyed prior to the life of the coal mine, which punishes the landowners instead of the polluting coal mine operators.

OSM Response: OSM disagrees with the commenter. As discussed further in section III(A), Montana is proposing to incorporate established State water law standards into its definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area,'' and these State water law standards use the term ''Beneficial use.'' At section 85–2–102(5)(a), Montana defines ''Beneficial use'' as ''a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses.'' Montana water law, and thus the Montana coal program through this amendment, recognizes a wide variety of ''beneficial uses'' and does not limit these uses by whether they were in place before or after the life of coal mines.

Comment: A couple of commenters stated they support the amendment, and that material damage assessments will consider beneficial uses, which the commenter opined will protect the farmers, ranchers, businesses, and families who put Montana's waters to beneficial use. Furthermore, they stated that the proposed adoption of Montana's classifications and beneficial uses of water into the definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' will provide regulators, operators, and the public with a clear and predictable basis for evaluating material damage. And this would reduce the risk of arbitrary or inconsistent outcomes while ensuring assessments remain accurate and reliable.

OSM Response: OSM agrees with the commenters that Montana's proposed adoption of classification and beneficial uses of water into its definition of ''Material damage . . . with respect to the hydrologic balance outside the permit area'' will provide a predictable basis for evaluating material damage, while also protecting the users of Montana's waters. Please see our full discussion of this topic in section III(A).

B. 82–4–203(35)(b) Material Damage With Respect to Alluvial Valley Floors

Comment: One commenter opined that OSM should approve Montana's proposed definition of ''Material damage . . . with respect to alluvial valley floors'' because OSM previously approved an identical definition in 90 FR 3673, 3677 (Jan. 15, 2025).

OSM Response: OSM agrees with the commenter, OSM had previously approved this section in our January 15, 2025 decision, and as proposed now, Montana's definition of ''Material damage . . . with respect to alluvial valley floors'' is consistent with the Federal regulations. Please see section III(B) for our discussion on this topic.

C. 82–4–203(35)(c) Material Damage With Respect to Subsidence

Comment: One commenter opined that OSM should approve Montana's proposed definition of ''Material damage . . . with respect to subsidence'' because Montana incorporated OSM's feedback from our prior denial of the definition in MT–042–FOR. 90 FR 3673, 3677 (Jan. 15, 2025).

OSM Response: OSM agrees with the commenter, OSM had previously denied this section in our January 15, 2025 decision, but Montana has incorporated our feedback and as proposed now Montana's definition of ''Material damage . . . with respect to subsidence'' is consistent with the Federal regulations. Please see section III(C) for our discussion on this topic.

D. 82–4–222(1)(m) Hydrologic Information Requirements

Comment: One commenter stated that Montana's proposed rule allowing operators to submit their own hydrologic and geologic information in the absence of State or Federal information creates a conflict of interest and undermines the public's trust in regulatory authorities.

OSM Response: OSM disagrees with the commenter. The Federal regulations at 30 CFR 780.21 allows an operator to submit their own hydrologic and geologic information when it cannot be sourced by a relevant Federal or State agency. Montana's proposed changes are consistent with the Federal regulations, and, thus, OSM is approving them. Please see section III(D) for our discussion on this topic.

Comment: One commenter stated that OSM should approve Montana's proposed changes to requirements for hydrologic information because the language was drawn directly from the Federal regulations at 30 CFR 780.21(c).

OSM Response: OSM agrees with the commenter as Montana's proposed changes to its hydrologic information requirements are consistent with the

Federal regulations. Please see section III(D) for our discussion on this topic.

Comment: In a comment, the sponsor of HB 587, State Representative Parry, stated that the proposed changes to requirements for submitting hydrologic information were made because the current rule, which only allows information from a State or Federal agency, is inadequate, and that in practice this information is best sourced from the operator themselves. State Representative Parry stated that to correct this, he changed the language under the proposed rule so that operators may provide this information if it is not available from the appropriate Federal and State agencies, and that MDEQ retains sole authority over determination of compliance.

OSM Response: The Federal regulations prefer that the hydrologic information is sourced by a relevant Federal or State agency, but when those agencies cannot provide that information, the regulations allow the hydrologic information to be sourced by the operator. OSM is approving Montana's proposed changes to these requirements because they were consistent with the Federal regulations. Please see section III(D) for our discussion on this topic.

E. HB 587 §§ 5 & 6—Immediate Effectiveness and Retroactive Application

Comment: Several commenters opined that the immediate effectiveness and retroactivity provisions of HB 587 violate SMCRA. Multiple commenters cited OSM's previous denial of identical provisions in HB 576, which found those provisions to violate 30 CFR 732.17(g), and stated that OSM should similarly deny the similar provisions in HB 587.

OSM Response: As discussed in section III(E), OSM agrees that the effective date of HB 587 is June 29, 2026. In addition, the U.S. District Court for the District of Montana recently held that ''the 'immediately effective' provisions of [HB] 576 and [SB] 392 conflict with the federal review process required by the SMCRA'' and entered a consent decree, agreed to by MDEQ, that stated that MDEQ would not ''apply, effectuate, or enforce any provision of HB 576 or SB 392 unless and until it is reviewed and approved by the Director of OSM, pursuant to the provisions of 30 CFR 732.17 and the Montana cooperative agreement.'' *Mont. Env't Ctr.* v. *Mont. Dep't of Env't Quality,* 2025 U.S. Dist. LEXIS 11470, *3–*5 (D. Mont. Jan. 22, 2025). While this case applies only to HB 576 and SB 392, the precedent from this case would likely invalidate the ''immediately effective'' provision in HB 587 as well.

F. Other Comments

Comment: A few commenters stated that OSM must assure that State programs are in compliance with SMCRA, and OSM must review and deny any changes to State standards that do not comply with the minimum Federal standards under SMCRA and the Federal regulations.

OSM Response: OSM agrees with the commenters, as directed by SMCRA and the Federal regulations at 30 CFR 730.11 and 732.17, OSM is required to assess whether a State program is in accordance with SMCRA and consistent with the Federal regulations, and, if there is a deficiency in a State's proposed amendment to its program, OSM must deny those defective aspects.

Comment: One commenter stated that OSM should only evaluate whether the current bill, HB 587, is consistent with SMCRA and the Federal regulations, and previous versions of MSURMA, other States' requirements, or other programs and desired outcomes are beyond the scope of OSM's duties and not authorized by SMCRA.

OSM Response: OSM disagrees with the commenter that SMCRA and the Federal regulations prevent us from considering information outside of the amendment when making our decision. OSM assesses State program amendments as required by SMCRA and the Federal regulations, and 30 CFR 732.17(h)(7) requires that the Director ''considers all relevant information, including any information obtained from public hearing and comments . . . .'' While OSM mainly reviews text of the proposed amendment compared to SMCRA and the Federal regulations, OSM must consider all relevant information in our assessment as to whether a proposed amendment is consistent with SMCRA and the Federal regulations, which can include how OSM has treated similar amendments in other States.

Comment: A few commenters, including U.S. Senator Daines of Montana, commented that Montana's amendment is consistent with the following Federal Executive Orders: *Unleashing American Energy* (Jan. 20, 2025), *Immediate Measures to Increase American Mineral Production* (Mar. 20, 2025), and *Reinvigorating America's Beautiful Clean Coal Industry* (Apr. 8, 2025).

OSM Response: OSM agrees that the Montana amendment is consistent with those Executive Orders. OSM is approving this amendment, though OSM's approval of any State program amendment is dependent on the procedures and requirements as dictated by SMCRA and the Federal regulations at 30 CFR 732.17.

Federal Agency Comments

On September 10, 2025, pursuant to 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–048–04). These agencies did not provide comments on this amendment.

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 (43 U.S.C. 7401 *et seq.*). This amendment does not relate to air or water quality standards and thus does not require a written concurrence from the EPA. Even so, on September 10, 2025, under 30 CFR 732.17(h)(11)(i), we sent a letter requesting comments from the EPA on the amendment (Administrative Record No. MT–048–04). The EPA did not provide any comments for this amendment.

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 September 10, 2025, we requested comments on the amendment (Administrative Record No. MT–048–04). Montana SHPO and the ACHP did not provide a comment.

V. OSM's Decision

Based on the above findings, we are approving Montana's proposed amendment (MT–048–FOR) sent to us on June 22, 2023 (Administrative Record No. MT–048–01). 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 APA, 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 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, the approval of State program amendments is exempted from OMB 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 of Executive Order 13175 and have determined that, although no Indian lands, as defined under SMCRA, are implicated by this rule, this State program amendment may have substantial direct effects on 20 Federally recognized Tribes because of the potential implications for the Tribe or Tribal members, Tribal treaty rights, reserved rights, trust resources, or ancestral lands. Therefore, on August 4, 2025, we sent invitation letters to consult to these 20 Tribes (Administrative Record No. MT–048–07).

In response to our invitation, we received a written comment from the Northern Cheyenne Tribe (NCT) on September 3, 2025. (Administrative record no. MT–048–13) NCT urged OSM to deny HB 587 because it is inconsistent with SMCRA and the Federal regulations. The NCT stated that clean water is spiritually and practically vital to its members way of life, and that OSM (as well as other Federal agencies) have fiduciary obligations to consider and protect the Tribe's best interests and natural resources. The NCT stated that HB 587 removes protections for water rights and rolls back legal protection of water resources when the receiving waters for all of Montana's coal mines are impaired and neighboring tribal members are seeing once reliable water sources disappear or polluted beyond use. The NCT also stated that HB 587 allows coal operators to violate WQS and reduce water quantity to a degree that hurts wildlife, stock-watering, irrigation, and domestic use. And that HB 587 would diminish the public oversight role by requiring locals affected by water quality and quantity changes to take on extra burdens to prove their claims, like hiring a statistician to prove significant water pollution. Lastly, the NCT stated that OSM should reject the bill because it repeats provisions that OSM have rejected on multiple occasions.

OSM Response: OSM appreciates the Tribes comments and agrees that OSM, along with other Federal agencies, has responsibility for Federal activities that can have Tribal implications. OSM disagrees that Montana's proposed definition of material damage would allow Montana coal mines to violate WQS, reduce water quality, or diminish public oversight. Please see our full discussion of this topic in section III(A) and in the comment section.

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.

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 (43 U.S.C. 4332(2)(C).

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 on the data and assumptions for the corresponding Federal regulations.

Congressional Review 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

Intergovernmental relations, Surface mining, Underground mining.

Marcelo Calle,

Acting 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 § 926.15 by adding an entry for ''May 15, 2025'' at the end of the table to read as follows:

§ 926.15 Approval of Montana regulatory program amendment.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* * * * *
May 15, 2025	May 29, 2026	Mont. Code. Ann. 82–4–203(35)(a), (b), and (c) *Definitions—Material damage—Approved.* 82–4–222(1)(m) *Permit Applications—Hydrologic Information*—Approved.

[FR Doc. 2026–10722 Filed 5–28–26; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2026–0595]

RIN 1625–AA08

Special Local Regulation; Detroit River, MI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) for certain navigable waters of the Detroit River. The SLR is needed to protect personnel, vessels, and the marine environment from potential hazards created during a rowing regatta on June 27, 2026. This regulation prohibits persons and vessels from entering the regulated area unless specifically authorized by the Captain of the Port Detroit or their designated representative.

DATES: This rule is effective from 7 a.m. through 4 p.m. on June 27, 2026.

ADDRESSES: To view available documents go to *https://www.regulations.gov* and search for USCG–2026–0595.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
SLR Special Local Regulation
U.S.C. United States Code

II. Background and Authority

An organization notified the Coast Guard that from 7 a.m. through 4 p.m. on June 27, 2026, they will sponsor a rowing regatta. The Coast Guard received a request under 33 CFR 100.15 from the Wyandotte Boat Club for a Marine Event Permit to host a rowing regatta race from Point Hennepin to the Grosse Ile toll bridge in the Detroit River. The rowing event will include approximately 400 participants.

The Captain of the Port Detroit (COTP) is issuing this special local regulation (SLR) under the authority in 46 U.S.C. 70041. The COTP has determined that potential hazards associated with the rowing regatta include increased vessel congestion due to the number of participants, tipping hazards of the rowing shells, and recovery of persons in cold-water temperatures. The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this SLR by June 27, 2026, to protect personnel and vessels. Therefore, we do not have enough time to solicit and respond to comments.

For the same reason, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.