section 707(b)(1)(A) and substituting ''and profits interests'' for ''or profits interests'' in section 707(b)(1)(B)) on the last day of the first taxable year for which the election applies (a related person). If a taxpayer makes the election under § 1.987–8T(d), the first taxable year of a related person for which the election applies is the first taxable year that ends with or within a taxable year of the taxpayer for which the taxpayer's election applies. An election under § 1.987–8T(d) may not be revoked.

(*i*) *Fresh start taxpayers.* A taxpayer to which § 1.987–10 applies that is required under § 1.987–10(a) to apply the fresh start transition method described in § 1.987–10(b) (fresh start taxpayer) may make the election under § 1.987–8T(d) only if the first taxable year for which the election would apply to the taxpayer is either the first taxable year beginning on or after the transition date (as defined in § 1.987–11(c)) in which the election is relevant or a subsequent taxable year in which the taxpayer's controlled group aggregate section 987 loss, if any, does not exceed $5 million. For purposes of this paragraph (g)(2)(i)(B), a taxpayer's controlled group aggregate section 987 loss means the aggregate net amount of section 987 loss that would be recognized pursuant to the election by the taxpayer and all other persons to whom the taxpayer's election would apply in the first taxable year of each person for which the election would apply.

(*ii*) *Other taxpayers.* Other taxpayers, including taxpayers described in § 1.987–1(b)(1)(ii) and taxpayers described in § 1.987–10(c), must follow the election rules provided in paragraph (g)(2)(i)(B)(*1*)(*i*) of this section if any related party is a fresh start taxpayer. If no related party is a fresh start taxpayer, the election under § 1.987–8T(d) may be made only if the first taxable year for which the election would apply to the taxpayer is either the first taxable year beginning on or after December 7, 2016, in which the election is relevant or a subsequent taxable year in which the taxpayer's controlled group aggregate section 987 loss, if any, does not exceed $5 million.

(*2*) *QBU-by-QBU elections in certain circumstances.* Notwithstanding paragraph (g)(2)(i)(B)(*1*) of this section, a taxpayer may make a separate election under § 1.987–8T(d) with respect to any section 987 QBU owned by the taxpayer if the first taxable year for which the election would apply to the taxpayer with respect to the section 987 QBU is a taxable year in which there is a section 987 gain recognized with respect to the section 987 QBU pursuant to the election, or is a taxable year in which there is a section 987 loss of $1 million or less that would be recognized with respect to the section 987 QBU pursuant to the election.

(C) *Election to translate all items at the yearly average exchange rate.* An election under § 1.987–3T(d) (election to translate all items at the yearly average exchange rate) may be made with respect to a section 987 QBU only if the first taxable year for which the election would apply is the first taxable year for which an election under § 1.987–8T(d) (annual deemed termination election) applies with respect to the section 987 QBU.

(g)(2)(ii) through (g)(3)(i)(D) [Reserved] For further guidance, see § 1.987–1(g)(2)(ii) through (g)(3)(i)(D).

(E) *Election for a CFC to apply section 987 to a dollar QBU.* An election under § 1.987–1T(b)(6)(iii) for a CFC to apply section 987 to a dollar QBU must be titled ''Section 987 Election for a CFC to Apply Section 987 to a Dollar QBU Under § 1.987–1T(b)(6)(iii)'' and must provide the name and address of each QBU for which the election is being made.

(F) *Election to apply the foreign currency mark-to-market method of accounting for qualified short-term section 988 transactions.* An election under § 1.987–3T(b)(4)(iii)(C) to apply the foreign currency mark-to-market method of accounting for qualified short-term section 988 transactions must be titled ''Section 987 Election to Use Foreign Currency Mark-to-Market Method of Accounting for Qualified Short-Term Section 988 Transactions Under § 1.987–3(b)T(4)(iii)(C)'' and must provide the name and address of each section 987 QBU for which the election is being made.

(G) *Election to translate all items at the yearly average exchange rate.* An election under § 1.987–3T(d) to translate all items at the yearly average exchange rate must be titled ''Section 987 Election to Translate All Items at the Yearly Average Exchange Rate Under § 1.987–3T(d)'' and must provide the name and address of each section 987 QBU for which the election is being made.

(H) *Annual deemed termination election.* An election under § 1.987–8T(d) for an owner to deem all of its section 987 QBUs to terminate on the last day of each taxable year must be titled ''Section 987 Annual Deemed Termination Election Under § 1.987–8T(d)'' and must provide the name and address of each section 987 QBU to which the election applies, including a section 987 QBU owned by a related person (within the meaning of paragraph (g)(2)(i)(B)(*1*) of this section).

(g)(4) through (6) [Reserved] For further guidance, see § 1.987–1(g)(4) through (6).

(h) *Effective/applicability date.* Paragraphs (g)(2)(i)(B) and (g)(3)(i)(H) of this section apply to the first taxable year beginning on or after December 7, 2016. Paragraphs (b)(1)(iii), (b)(6), (c)(1)(ii)(B), (c)(3)(i)(E), (d)(3), (f), (g)(2)(i)(C), and (g)(3)(i)(E) through (G) of this section apply to taxable years beginning one year after the first day of the first taxable year following December 7, 2016. Notwithstanding the preceding sentence, if a taxpayer makes an election under § 1.987–11(b), then paragraphs (b)(1)(iii), (b)(6), (c)(1)(ii)(B), (c)(3)(i)(E), (d)(3), (f), (g)(2)(i)(C), and (g)(3)(i)(E) through (G) of this section apply to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

(i) *Expiration date.* The applicability of this section expires on December 6, 2019.

[T.D. 9795, 81 FR 88868, Dec. 8, 2016]

[FR Doc. 2026–17154 Filed 8–20–26; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–041–FOR; Docket ID: OSM–2023–0002; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Montana Regulatory Program

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

ACTION: Final rule; not approving, with one exception.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is not approving, with one exception, an amendment to the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Montana legislature, specifically Montana House Bill 328, proposes to add a definition of affected drainage basin to the Montana Code Annotated (MCA). Additionally, House Bill 328 proposes changes to the Montana Code Annotated, pertaining to bond release application requirements.

DATES: The effective date is September 21, 2026.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Division Chief, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602, Telephone: (307) 204–4397, Email: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Subject to OSM's oversight, section 503(a) of the Act 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 the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). 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, 926.16, and 926.30.

II. Submission of the Amendment

By letter dated February 16, 2023 (FDMS Document ID No. OSM–2023–0002–0002), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) that proposed revisions to Montana law, including revisions to MCA §§ 82–4–203(3) and 82–4–232. Specifically, Montana proposes to add language at MCA § 82–4–203(3), defining the term ''affected drainage basin.'' Montana also proposes to incorporate the term ''affected drainage basin'' into the bond release requirements found at MCA § 82–4–232. Minor wording changes and recodifications were also proposed in the MCA provisions above.

We announced receipt of the proposed amendment in the May 19, 2023, **Federal Register** (88 FR 32161) (FDMS Document ID No. OSM–2023–0002–0004). 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. No public hearing was held because no request for a public hearing was received. We received two public comments regarding the formal program amendment, and the public comment period ended on June 20, 2023.

During our review of the amendment, we identified many concerns with the formal program amendment as submitted. Our concerns included (1) Montana's proposed definition of ''affected drainage basin'' in MCA § 82–4–203(3), (2) Montana's proposal to strike the words ''if it is satisfied'' from MCA § 82–4–232(6)(k), (3) Montana's proposed changes to MCA at §§ 82–4–232(6)(k)(ii) and 82–4–232(6)(k)(iii), (4) Montana's addition of subpart ''C'' language in MCA § 82–4–232(6)(k)(iv), which could allow for final bond release to occur in the phased bond release process normally reserved for reclamation activities associated with phase II bond release, and (5) Montana's proposed changes in the MCA § 82–4–232(6)(k)(v), which would remove the period specified for operator responsibility.

We notified Montana of our concerns in a letter dated August 31, 2023, and allowed Montana the opportunity to submit a revised amendment or draft proposed changes in response to our concerns. Montana responded in a letter dated September 28, 2023, stating that because the proposed changes to the MCA were legislative in nature, they would be unable to submit revisions to the amendment. For this reason, we are proceeding with the final rule **Federal Register** notice of not approving the amendment, with one exception.

III. OSMRE's Findings

SMCRA sections 503 and 505, and the Federal regulations at 30 CFR 730.5, establish the criteria for approval of State SMCRA programs. A State program must set forth requirements that satisfy the Federal minimum standards and must include provisions that are no less stringent than SMCRA and no less effective than the Federal regulations. If these minimum Federal standards are met, a State may indicate that its State program shall not be more stringent than the Federal program.

The following is a summary of the proposed statutory and rule changes submitted by Montana, as well as OSMRE's findings concerning Montana's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. For the reasons discussed below, we are not approving the amendment, with one exception, as described below.

A. Revisions to the MCA That Do Not Have Corresponding Federal Provisions

1. MCA § 82–4–203(3)—Definitions

In Senate Bill 328, Montana proposes to define the term ''affected drainage basin'', which would mean ''an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point''. No direct federal counterpart definition for affected drainage basin exists. The Federal definition of hydrologic balance (30 CFR 701.5) does include the term ''drainage basin'' and means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. The Federal definition further defines hydrologic balance as encompassing the dynamic relationships among precipitation, runoff, evaporation, and changes in groundwater and surface water storage and that a drainage basin is therefore one example of a hydrologic unit in terms of the hydrologic balance. The Administrative Rules of Montana (ARM), at 17.24.1116(6)(d)(i), which pertain to phase IV bond release, require all disturbed lands within any designated drainage basin to have been reclaimed in accordance with phase I, phase II, and phase III requirements. The terms ''designated drainage basin'', ''affected drainage basin'', and ''drainage basin'' are not defined in the ARM. With this amendment submittal, Montana is proposing to define ''affected drainage basin'' in the MCA. The term ''designated drainage basin'' is used (but not defined) in the ARM. If approved, the definition of ''affected drainage basin'' would introduce inconsistencies in terminology between the State statute and the rule. Additionally, the proposed definition of ''affected drainage basin'' is unclear. Better defining ''affected drainage basin'' and consistent terminology and definitions between the State statute and the rule would help the effectiveness of the Montana program. A State program must set forth requirements that satisfy the Federal minimum standards and must include provisions that are no less stringent than SMCRA and no less effective than the Federal regulations. Differing terminology between State statute and rule and an unclear definition would render the proposed definition of ''affected drainage basin'' less effective than the Federal regulations. Therefore, we are not approving this provision.

Because we are not approving Montana's proposed definition of ''affected drainage basin'' at MCA § 82–4–203(3), the following proposed definition recodifications in the MCA are no longer necessary and would also not be approved:

MCA § 82–4–203(4)(a)—Alluvial Valley Floor [30 CFR 701.5]

MCA § 82–4–203(5)—Approximate Original Contour [30 CFR 701.5]

MCA § 82–4–203(6)—Aquifer [30 CFR 701.5]

MCA § 82–4–203(7)—Area of Land Affected [30 CFR 701.5]

MCA § 82–4–203(8)—Bench [30 CFR 701.5]

MCA § 82–4–203(9)—Board [No corresponding Federal definition]

MCA § 82–4–203(10)—Coal Conservation Plan [No corresponding Federal definition]

MCA § 82–4–203(11)—Coal Preparation [30 CFR 701.5]

MCA § 82–4–203(12)—Coal Preparation Plant [30 CFR 701.5]

MCA § 82–4–203(13)—Contour Strip Mining [30 CFR 701.5]

MCA § 82–4–203(14)—Cropland [30 CFR 701.5]

MCA § 82–4–203(15)—Degree [No corresponding Federal definition]

MCA § 82–4–203(16)—Department [No corresponding Federal definition]

MCA § 82–4–203(17)—Developed Water Resources [30 CFR 701.5]

MCA § 82–4–203(18)—Ephemeral Drainageway [30 CFR 701.5]

MCA § 82–4–203(19)—Failure to Conserve Coal [No corresponding Federal definition]

MCA § 82–4–203(20)—Fill Bench [No corresponding Federal definition]

MCA § 82–4–203(21)—Fish and Wildlife Habitat [No corresponding Federal definition]

MCA § 82–4–203(22)—Forestry [No corresponding Federal definition]

MCA § 82–4–203(23)—Grazing Land [No corresponding Federal definition]

MCA § 82–4–203(24)—Higher or Better Uses [30 CFR 701.5]

MCA § 82–4–203(25)—Hydrologic Balance [30 CFR 701.5]

MCA § 82–4–203(26)—Imminent Danger to the Health and Safety of the Public [30 CFR 701.5]

MCA § 82–4–203(27)—Industrial or Commercial [No corresponding Federal definition]

MCA § 82–4–203(28)—In situ Coal Gasification [30 CFR 701.5]

MCA § 82–4–203(29)—Intermittent Stream [30 CFR 701.5]

MCA § 82–4–203(30)—Land Use [30 CFR 701.5]

MCA § 82–4–203(31)—Marketable Coal [No corresponding Federal definition]

MCA § 82–4–203(32)—Material Damage [30 CFR 701.5]

MCA § 82–4–203(33)—Method of Operation [No corresponding Federal definition]

MCA § 82–4–203(34)—Mineable Coal [No corresponding Federal definition]

MCA § 82–4–203(35)—Mineral [No corresponding Federal definition]

MCA § 82–4–203(36)—Operation [No corresponding Federal definition]

MCA § 82–4–203(37)—Operator [30 CFR 701.5]

MCA § 82–4–203(38)—Overburden [30 CFR 701.5]

MCA § 82–4–203(39)—Pastureland [No corresponding Federal definition]

MCA § 82–4–203(40)—Perennial Stream [30 CFR 701.5]

MCA § 82–4–203(41)—Person [No corresponding Federal definition]

MCA § 82–4–203(42)—Prime Farmland [30 CFR 701.5]

MCA § 82–4–203(43)—Prospecting [No corresponding Federal definition]

MCA § 82–4–203(44)—Reclamation [30 CFR 701.5]

MCA § 82–4–203(45)—Recovery Fluid [No corresponding Federal definition]

MCA § 82–4–203(46)—Recreation [No corresponding Federal definition]

MCA § 82–4–203(47)—Reference Area [30 CFR 701.5]

MCA § 82–4–203(48)—Remining [30 CFR 701.5]

MCA § 82–4–203(49)—Residential [No corresponding Federal definition]

MCA § 82–4–203(50)—Restore or Restoration [No corresponding Federal definition]

MCA § 82–4–203(51)—Strip Mining [No corresponding Federal definition]

MCA § 82–4–203(52)—Subsidence [No corresponding Federal definition]

MCA § 82–4–203(53)—Surface Owner [No corresponding Federal definition]

MCA § 82–4–203(54)—Topsoil [30 CFR 701.5]

MCA § 82–4–203(55)—Underground Mining [30 CFR 701.5]

MCA § 82–4–203(56)—Unwarranted Failure to Comply [No corresponding Federal definition]

MCA § 82–4–203(57)—Waiver [No corresponding Federal definition]

MCA § 82–4–203(58)—Wildlife Habitat Enhancement Feature [No corresponding Federal definition]

MCA § 82–4–203(59)—Written Consent [No corresponding Federal definition]

B. Revisions to the MCA That Do Not Have the Same Meaning as Corresponding Federal Provisions

1. MCA § 82–4–232(6)(k)—Area Mining Required—Bond—Alternative Plan

In Senate Bill 328, Montana is proposing revisions to bond release requirements and incorporates the proposed new definition of ''affected drainage basin'' (MCA § 82–4–203(3) into its revisions of MCA § 82–4–232(6)(k). Current Montana rules, at ARM 17.24.1116(6)(d)(i), which pertain to phase IV bond release, require all disturbed lands within any ''designated drainage basin'' to have been reclaimed in accordance with phase I, II, and III requirements. If approved, a conflict would exist between the MCA and the ARM, in that the ARM confines phase IV bond release to be within a ''designated drainage basin''; with the MCA proposing to allow for any phase bond release, including phase IV, to occur within or across an ''affected drainage basin''. Further, different terminology is used between proposed statute and rule with Montana proposing to define and use ''affected drainage basin'' in the MCA, and the ARM currently employs but does not define ''designated drainage basin''. The Federal rules and requirements for phased bond release in 30 CFR 800.40 are consistent with the Federal requirements for phased bond release in SMCRA section 519(c). Consistent terminology is needed between proposed statute and existing rule for this revision to be as stringent as SMCRA and as effective as the Federal regulations. Therefore, we are not approving this provision.

In the same statute (MCA § 82–4–232(6)(k)), Montana is proposing to remove the words ''if it is satisfied'' from the sentence: ''At the request of the permittee, and for a designated area within the permit boundary within or across affected drainage basins, the department shall release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:'' This change could be interpreted as though the regulatory authority loses the discretion to make the determination that the reclamation covered by the bond or portion of the bond has been accomplished as required. If the permittee submits a bond release application package, Montana could potentially lose the ability to deny the bond release package or portions thereof even if Montana determines that the reclamation covered by the bond or portion of the bond has not been accomplished. Read plainly, if the permittee requests bond release, then by removing the phrase ''if it is satisfied'', Montana would be required to release the bond in whole or in part if the reclamation has been accomplished (according to the requirements later in the proposed statute). Striking this language would render this provision less stringent than counterpart Federal statute at SMCRA section 519(c). Therefore, we are not approving this proposed revision.

2. MCA § 82–4–232(6)(k)(ii)—Area Mining Required—Bond—Alternative Plan

Montana's proposed changes to MCA § 82–4–232(6)(k)(ii) are as stringent as its counterpart in SMCRA section 519(c)(2) (30 U.S.C. 1269(c)(2)) and as effective as counterpart Federal rules at 30 CFR 800.40(c)(2) when coupled with subsequent proposed changes to MCA § 82–4–232(6)(k)(iii). However, because we are not approving MCA § 82–4–232(6)(k)(iii), which, as proposed, would have included language that would have been struck from the proposed revisions to MCA § 82–4–232(6)(k)(ii), we are not approving these changes.

3. MCA § 82–4–232(6)(k)(iii)—Area Mining Required—Bond—Alternative Plan

Montana's proposed changes to MCA § 82–4–232(6)(k)(iii) are as stringent as its counterpart in SMCRA section 519(c)(2) (30 U.S.C. 1269(c)(2)) and as effective as counterpart Federal rules at 30 CFR 800.40(c)(2). However, Montana proposes to also reference MCA § 82–4–232(6)(k)(iv) in this provision. Because we are not approving Montana's proposed changes to MCA § 82–4–232(6)(k)(iv), this cross-reference would not exist and would render this provision unworkable and less effective than counterpart Federal rules and statute. Therefore, we are not approving this proposed revision.

4. MCA § 82–4–232(6)(k)(iv)—Area Mining Required—Bond—Alternative Plan

Montana proposes to retain similar language found in SMCRA section 519(c)(2) (30 U.S.C. 1269(c)(2)), which pertains to suspended solids to streamflow or runoff outside the permit area and soil productivity for prime farmlands (subparts A and B), in its proposed statute. But Montana proposes to add a subpart C to this provision, stating: ''The department shall retain a portion of the bond sufficient for a third party to fully satisfy remaining permit conditions if (C) the permittee has not successfully completed all reclamation activities, including water replacement, in the designated area''. As this section is the implied Phase II bond release section, Montana's addition of the subpart C language renders this provision less stringent than the Federal counterpart at section 519(c)(2) of the Act because the remaining bond held could be released if the permittee meets subparts A, B, and C (*i.e.,* successful completion of all reclamation activities, including water replacement, in the designated area) of this provision. Therefore, we are not approving this proposed revision.

5. MCA § 82–4–232(6)(k)(v)—Area Mining Required—Bond—Alternative Plan

Montana's proposed changes to MCA § 82–4–232(6)(k)(v) are less stringent than counterpart Federal statute found in section 519(c)(3) (implied Phase III bond release requirements) of SMCRA (30 U.S.C. 1269(c)(3)). SMCRA again applies the period specified for operator responsibility (section 515(b)(20)(A) of the Act (30 U.S.C. 1265(b)(20(A)). Federal counterpart rules at 30 CFR 800.40(c)(3) also apply this standard, and no bond can be released under this corresponding provision unless the period of operator responsibility has passed. Montana proposes to remove the period specified for operator responsibility in this section, rendering this provision less stringent than Federal counterpart statute in section 519(c)(3) of SMCRA and less effective than Federal counterpart rules at 30 CFR 800.40(c)(3). Therefore, we are not approving this proposed revision.

C. Revisions to the MCA That Have the Same Meaning as Corresponding Federal Provisions

Montana proposes additions and revisions to the following rule, which contains language that is the same or similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore, we are approving the rule change to MCA § 82–4–232(6)(k)(i) related to Area Mining Required—Bond—Alternative Plan, which is a State counterpart to section 519(c)(2) (30 U.S.C. 1269(c)(2)) and 30 CFR 800.40(c)(2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received two. The first commenter raised general concerns with the development of fossil fuels on public lands and climate change. The second commenter was concerned generally about fossil fuel development and waterway pollution in Montana. These comments presented only generalized concerns that were beyond the scope of this proposed program amendment, which was focused on specific changes to the Montana State program. To the extent the proposed definition of ''affected drainage basin'' relates to the commenters concern about water pollution, we have denied this provision as not in accordance with SMCRA and inconsistent with the Federal regulations.

Federal Agency Comments

On February 21, 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 with an actual or potential interest in the Montana program (Administrative Record No. MT–41–06). We did not receive any comments.

Environmental Protection Agency (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 Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on February 21, 2023, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. MT–41–06). We did not receive any comments.

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 August 5, 2021, we requested comments on the Montana amendment from the SHPO and the ACHP (Administrative Record Numbers MT–41–04 and MT–41–05, respectively). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are not approving, with one exception, Montana's submittal sent to us on February 16, 2023 (Administrative Record No. MT–041–01). 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 consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

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 private 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 OSMRE's decision on State program amendments are 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 its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and 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 legislation and 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 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. With one exception, this rule does not approve an amendment to the Montana program submitted and drafted by the State. A State program must set forth requirements that satisfy the Federal minimum standards and must include provisions that are no less stringent than SMCRA and no less effective than the Federal regulations.

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 memorandum of understanding, the Department of the Interior and Montana agreed to coordinate the administration of applicable surface mining requirements in the Crow Ceded Strip. Even though, with one exception, we are not approving the amendment, our action will not have any significant effects on the regulation of surface coal mining operations within the Crow Ceded Strip. 512 Departmental Manual 4 (Department of the Interior Policy on Consultation with Indian Tribes) 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. Our not approving, with one exception, the amendment is an action without tribal implications under section 4.3B of 512 Departmental Manual 4.

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), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 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 the Office of Management and Budget 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 upon 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.

Congression Review Act

This rule is not a major rule under 5 U.S.C. 804(2). 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, Interior 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 program amendment by letter dated February 16, 2023, Administrative Record No. MT–041–01, which proposed changes to the Montana approved program as a result of the Montana Legislature's 2023 passage of a Senate Bill (SB 328) are not approved:

(1) Montana's proposed definition of ''affected drainage basin'' in MCA § 82–4–203(3).

(2) Montana's proposed definition recodifications in the MCA § 82–4–203(4)(a)—Alluvial Valley Floor, MCA § 82–4–203(5)—Approximate Original Contour, MCA § 82–4–203(6)—Aquifer, MCA § 82–4–203(7)—Area of Land Affected, MCA § 82–4–203(8)—Bench, MCA § 82–4–203(9)—Board, MCA § 82–4–203(10)—Coal Conservation Plan, MCA § 82–4–203(11)—Coal Preparation, MCA § 82–4–203(12)—Coal Preparation Plant, MCA § 82–4–203(13)—Contour Strip Mining, MCA § 82–4–203(14)—Cropland, MCA § 82–4–203(15)—Degree, MCA § 82–4–203(16)—Department, MCA § 82–4–203(17)—Developed Water Resources, MCA § 82–4–203(18)—Ephemeral Drainageway, MCA § 82–4–203(19)—Failure to Conserve Coal, MCA § 82–4–203(20)—Fill Bench, MCA § 82–4–203(21)—Fish and Wildlife Habitat, MCA § 82–4–203(22)—Forestry, MCA § 82–4–203(23)—Grazing Land, MCA § 82–4–203(24)—Higher or Better Uses, MCA § 82–4–203(25)—Hydrologic Balance, MCA § 82–4–203(26)—Imminent Danger to the Health and Safety of the Public, MCA § 82–4–203(27)—Industrial or Commercial, 82–4–203(28)—In situ Coal Gasification, MCA § 82–4–203(29)—Intermittent Stream, MCA § 82–4–203(30)—Land Use, MCA § 82–4–203(31)—Marketable Coal, MCA § 82–4–203(32)—Material Damage, MCA § 82–4–203(33)—Method of Operation, MCA § 82–4–203(34)—Mineable Coal, MCA § 82–4–203(35)—Mineral, MCA § 82–4–203(36)—Operation, MCA § 82–4–203(37)—Operator, MCA § 82–4–203(38)—Overburden, MCA § 82–4–203(39)—Pastureland, MCA § 82–4–203(40)—Perennial Stream, MCA § 82–4–203(41)—Person, MCA § 82–4–203(42)—Prime Farmland, MCA § 82–4–203(43)—Prospecting, MCA § 82–4–203(44)—Reclamation, MCA § 82–4–203(45)—Recovery Fluid, MCA § 82–4–203(46)—Recreation, MCA § 82–4–203(47)—Reference Area, MCA § 82–4–203(48)—Remining, MCA § 82–4–203(49)—Residential, MCA § 82–4–203(50)—Restore or Restoration, MCA § 82–4–203(51)—Strip Mining, MCA § 82–4–203(52)—Subsidence, MCA § 82–4–203(53)—Surface Owner, MCA § 82–4–203(54)—Topsoil, MCA § 82–4–203(55)—Underground Mining, MCA § 82–4–203(56)—Unwarranted Failure to Comply, MCA § 82–4–203(57)—Waiver, MCA § 82–4–203(58)—Wildlife Habitat Enhancement Feature, MCA § 82–4–203(59)—Written Consent.

(3) Montana's proposal to strike the words ''if it is satisfied'' from MCA § 82–4–232(6)(k).

(4) Montana's proposed changes to MCA at §§ 82–4–232(6)(k)(ii) and 82–4–232(6)(k)(iii).

(5) Montana's addition of subpart ''C'' language in MCA § 82–4–232(6)(k)(iv), which could allow for final bond release to occur in the phased bond release process normally reserved for reclamation activities associated with phase II bond release.

(6) Montana's proposed changes in the MCA § 82–4–232(6)(k)(v), which would remove the period specified for operator responsibility.

■ 3. In § 926.15, amend the table by adding an entry for ''February 16, 2023'' at the end of the table to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* *	* *
February 16, 2023	August 21, 2026	Mont. Code Ann. 82–4–232(6)(k)(i)—Area Mining Required—Bond—Alternative Plan, Mont. Code Ann.

[FR Doc. 2026–17055 Filed 8–20–26; 8:45 am]

BILLING CODE 4310–05–P