With the reduction of near-coastal vulnerabilities, U.S. Border Patrol can focus on land-based interdiction.

Establishing the four CEAs does not close any waters to navigation, impose new reporting or permitting requirements, or require vessels to alter otherwise lawful routes or operations. Vessels operating within the CEAs, however, may be subject to the enforcement authorities made applicable under the Anti-Smuggling Act, including being hailed, stopped, boarded, examined, searched, or brought into port as authorized by law. CBP recognizes that such enforcement activity may in individual cases result in limited operational impacts, including delay, to vessel owners, operators, passengers, and cargo interests. CBP has determined that the possibility of impacts is justified by the need to address the threats described above.

III. Establishment of Four Customs-Enforcement Areas

Pursuant to the authority contained in section 1 of the Anti-Smuggling Act of 1935, as amended (49 Stat. 517) (19 U.S.C. 1701) (Anti-Smuggling Act), I, Rodney S. Scott, Commissioner of U.S. Customs and Border Protection, do hereby find and declare:

1. That vessels hover or are being kept off the coast of the United States on the high seas adjacent to but outside customs waters within the areas described as follows:

a. *South Florida:* The area of water that extends seaward from 28°48′00″ N/80°44′19.7″ W (northeast corner of Brevard County), following an irregular arc along the coastline of South Florida, including the Florida Keys, to 28°26′01″ N/82°40′35.8″ W (northwest corner of Pasco County), out to 24 NM from baseline.

b. *Texas:* The area of water that extends from 29°40′44.0″ N/93°50′16.0″ W (Mouth of the Sabine River), following an irregular arc along the Gulf Coast, extending south to the maritime boundary line with Mexico, out to 24 NM from baseline.

c. *Central/Southern California:* The area of water that extends from 37°06′28.00″ N/122°20′08.5″ W (Año Nuevo Lighthouse), following an irregular arc along the coast, south to the maritime boundary line with Mexico, out to 24 NM from baseline, including the eight islands off the coast—the five islands of Channel Islands National Park, San Clemente Island, Santa Catalina Island, and San Nicolas Island.

d. *Puerto Rico:* The area of water that encircles the Island of Puerto Rico, to include the nearby islands of Mona, Desecheo, Vieques, and Culebra, out to 24 NM from baseline, but in no instance beyond a recognized international boundary line.

2. That the areas described in paragraph 1 do not include any waters more than 100 NM from the place or immediate area where such vessels are found or kept off the coast of the United States and are hereby declared to be hovering or kept, and do not include any waters more than 50 NM outwards from the outer limit of the customs waters.

3. That, by virtue of the presence of such vessels within the areas described in paragraph 1, the unlawful introduction or removal into or from the United States of merchandise or persons is being or may be occasioned, promoted, or threatened.

4. That all the waters within the areas described in paragraph 1 are in such proximity to such vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessels.

And I do hereby proclaim that under the terms of the Anti-Smuggling Act, the areas described in paragraph 1 constitute customs-enforcement areas, and the provisions of law applying to the high seas adjacent to customs waters shall be enforced in such areas upon any vessel, merchandise, or person found therein, including the Anti-Smuggling Act of 1935 (19 U.S.C. 1701); section 581 of the Tariff Act of 1930, as amended (19 U.S.C. 1581); and 18 U.S.C. 2237.

The establishment of each customs-enforcement area described in this document is intended to operate independently. If any customs-enforcement area, provision, boundary, or application of this document is held invalid or is stayed, enjoined, or otherwise made unenforceable, the remainder of this document is intended to remain in effect to the fullest extent permitted by law. For example, if a court enjoins the establishment of one customs-enforcement area, CBP intends that the other customs-enforcement areas remain established and enforceable. Similarly, if a court invalidates a portion of a boundary or a specific application within one customs-enforcement area, CBP intends that the remaining portions and applications remain in effect.

IV. Signing Authority

This document is being issued in accordance with DHS Delegation 07010.3, Revision 03.2.

Rodney S. Scott,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2026–17354 Filed 8–24–26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–043–FOR; Docket No. OSM–2023–0008; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

Montana Regulatory Program

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

ACTION: Final rule; denying.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are denying 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 (Senate Bill (SB) 392). The proposed amendment would have added a provision requiring equal application of court costs to the prevailing party in contested case proceedings by a court or administrative agency that issues a decision. The proposal would have also amended the Montana Code Annotated (MCA) to refer to the proposed equal application of court costs rule. Finally, SB 392 includes contingencies that apply to the proposed amendment but are not codified into the MCA: codification instructions, a severability clause, an effective date clause, and an applicability statement.

DATES: The effective date is September 24, 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 June 22, 2023 (Administrative Record No. MT–043–01), Montana sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana's proposed amendment to be administratively complete on June 27, 2023. Montana submitted the proposed amendment to us, on its own volition, after the Montana legislature passed SB 392 during the 2023 legislative session. SB 392 amends the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as well as sections 82–4–251, 252, and 255 of the MCA.

Specifically, Montana proposes a new section to MCA at § 82–4–255, which requires the equal application of court costs in contested case proceedings by a court or administrative agency that issues a decision pursuant to § 82–4–2. This proposed section states that a court or administrative agency may award the prevailing party reasonable costs of litigation, including filing fees, attorney fees, and witness costs, but the court or administrative agency may not consider the identities of the parties involved when determining the award. The parties that may be awarded attorney fees include the permittee, permit applicant, agency, public interest litigant, or any other party to the action. The proposal applies equally to all parties in an action and places the burden of proof and persuasion for awarding court costs on the requesting party.

At § 82–4–251(7) of the MCA, Montana proposes that new § 82–4–255 applies to an order issued or administrative proceedings under 82–4–251. And at § 82–4–252(5) of the MCA, Montana proposes any court issuing a final order may award court costs in line with new § 82–4–255.

Finally, SB 392 adds four contingencies to the proposed changes of §§ 82–4–251, 82–4–252, and 82–4–255 that are not codified into the MCA but apply to the sections amended by the legislation. Section 4 of SB 392 states its newly proposed section for equal application of court costs will be codified within Title 82, chapter 4, part 2. Montana later changed this to § 82–4–255 of the MCA. Section 5 of SB 392 states that if any part of SB 392 is invalid, all valid parts are severable and may remain in effect. Section 6 of SB 392 states that the bill is effective upon passage and approval in the Montana legislature. Section 7 of SB 392 states that the bill applies to court actions filed on or after the effective date of SB 392.

We announced receipt of the proposed amendment in the August 7, 2023, **Federal Register** (88 FR 52086). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. After a request from several public interest groups, we announced a 60-day extension of the comment period until November 6, 2024. *See* 88 FR 64855 (Sept. 20, 2023). We held a public hearing on November 1, 2023, in Billings, MT, where we received testimony from 23 individuals. (Administrative Record No. MT–043–19). We also received 219 written comments on the proposed rule. On April 30, 2025, OSM sent a letter to the Montana Department of Environmental Quality (MDEQ) detailing concerns that OSM had with the proposed amendment (Administrative Record No. MT–043–28). The letter offered two options for MDEQ: suspend the amendment to allow MDEQ to make necessary changes or proceed to the final rule stage with no changes. MDEQ responded on May 8, 2025, that, because the proposed amendments were the result of legislative action, MDEQ is unable to submit further modifications to address OSM's concerns. (Administrative Record No. MT–043–29).

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 disapproving Montana's submittal.

A. Changes to §§ 82–4–251, 252, and 255 of the MCA

Montana's proposed changes under §§ 82–4–251, 82–4–252, and 82–4–255 of the MCA are not in accordance with SMCRA and are inconsistent with the Federal regulations. Through SB 392, Montana proposes to amend MCA §§ 82–4–251, 252, and 255 to require an equal application of court costs when a court or administrative agency issues a final order in an action pursuant to Title 82, chapter 4, part 2 of the MCA. Proposed § 82–4–255 of the MCA states that: (1) a court or administrative agency may award the prevailing party reasonable costs of litigation; (2) the court or administrative agency may not consider the identity of any party, including but not limited to a permittee, permit applicant, agency, public interest litigant, or other party to an action; (3) this section supersedes prior rulings pursuant to private attorney general doctrine; and (4) the provisions apply equally to all parties in an action. Proposed amendments to MCA §§ 82–4–251 and 82–4–252 would require those sections to adhere to MCA § 82–4–255. While we are generally supportive of Montana's attempts to rein in frivolous lawsuits that slow down energy production, following our review, OSM has determined that there are several issues with the proposed amendment when compared to SMCRA and the Federal regulations.

First, proposed § 82–4–255 MCA is inconsistent with SMCRA and the Federal regulations. Because § 82–4–255 covers proceedings by a court or administrative agency that issues a decision pursuant to the Montana coal program, both citizen suits and applications for review of an order or notice, investigation, or hearing are covered under § 82–4–255. Under SMCRA, the fees shifting provision for citizen suits, including attorneys fees and court costs, are within section 520(d), and the fee shifting provision for applications for review of an order are contained within section 525(e). Proposed § 82–4–255 MCA limits who can receive awards of court costs to ''prevailing parties,'' prohibits a judge from considering the identity of any party in its decision, supersedes prior rulings pursuant to private attorney general doctrine, and must be applied equally to all parties in an action.

In contrast to Montana's proposed changes to its fee shifting provision, sections 520(d) and 525(e) of SMCRA do not use the "prevailing parties" standard; instead, they provide for attorney fees whenever the tribunal deems that fees are proper, which is often referred to as the "whenever appropriate" standard. 30 U.S.C. 1276. The House Committee Report that first contained the provision that ultimately became section 525(e) stated the "intention that this subsection not be interpreted or applied in a manner that would discourage good faith actions on the part of interested citizens." H.R. Rep. No. 218, at 131 (1977). Likewise, the Senate Committee on Energy and Natural Resources further explained: "In many, if not most, cases in both the administrative and judicial forum, the citizen who sues to enforce the law, or participates in administrative proceedings to enforce the law, will have little or no money with which to hire a lawyer. . . . *Attorneys' fees may be awarded to the permittee or government when the suit or participation is brought in bad faith*." S. Rep. No. 95–128, at 59 (1977) (emphasis added).

To implement this statutory direction, after *Ruckelshaus* v. *Sierra Club,* 463 U.S. 680 (1983), the Federal regulations at 43 CFR 4.1294 do not treat all parties as equal; instead, the Federal regulations separate the types of parties that can receive and award into three groups: "any person," "permittee," and "OSM," and details how a court should award court costs in multiple situations depending on the types of parties involved. For example, for a person other than a permittee to receive fees from OSM, that person must "acheiv[e] at least some degree of success on the merits, assuming that they made a substantial contribution to the determination of the issues." 43 CFR 4.1294(b). In contrast, OSM or a permittee can recover fees only from a person in instances of bad faith or harassment. 43 CFR 4.1294(d) and (e); *see also M.L. Johnson Family Props.* v. *Bernhardt,* 2020 U.S. Dist. Lexis 192103, *15 (E.D. Ky. 2020) (citing the House Committee report and holding that it was not proper to allow the permittee to recover fees against a landowner).

Montana's proposed rule, which would award costs only to prevailing parties, directly conflicts with SMCRA, which uses the "whenever appropriate" rather than the "prevailing party" standard and the Federal regulations, which do not treat all parties equally when it comes to recovery of attorney fees. Under Montana's proposed amendment, a party that has a reasonable, good-faith claim may choose not to bring forward their claim because they could potentially lose and be responsible for both their legal fees as well as the legal fees accrued by the permittee or MDEQ. SMCRA was written to encourage public participation, so the court costs provisions cannot be written or enforced to stifle that participation, unless the party was determined to have acted in bad faith. Montana's proposed regulation expands who must pay court costs beyond "bad faith," as it would make any party who loses eligible to pay court costs regardless of the circumstances. Thus, Montana's proposed requirement that any prevailing party may receive court costs is inconsistent with SMCRA and the Federal regulations.

Next, proposed changes to §§ 82–4–251 and 82–4–252 MCA are not in accordance with SMCRA and are inconsistent with the Federal regulations. Both proposed changes to §§ 82–4–251(7) and 82–4–252(5) MCA require those sections of the MCA to adhere to section 1 of SB 392. As discussed above, section 1 of SB 392 is inconsistent with the Federal regulations. Therefore, Montana's proposed changes to §§ 82–4–251(7) and 82–4–252(5) MCA must be denied.

Lastly, we note that this proposed amendment has only been interpreted in terms of whether it is in accordance with SMCRA and consistent with the Federal regulations. There has been no official determination as to conflicts with other Federal laws.

B. Contingencies to SB 392

SB 392 also added contingencies that are not codified into the MCA but that affect the amended parts of the MCA.

1. Section 4. Codification Instruction

Section 4 of SB 392 states what is now new § 82–4–255 is intended to be codified as an integral part of Title 82, chapter 4, part 2 of the MCA, and the provisions of § s 82–4–2 will apply to the new section. Codification is a matter left to the states and OSM has no comment on this section.

2. Section 5. Severability

Section 5 of SB 392 states that if any part of SB 392 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, the Federal regulations at 30 CFR 732.17(h)(7) require the Director to consider all relevant information, using the criteria set forth in 30 CFR 732.15, to approve or disapprove the amendment. The Director may approve all or parts of an amendment that are in accordance with SMCRA and consistent with the Federal regulations. Here, notwithstanding section 5 of SB 392, OSM has disapproved the entire amendment.

3. Section 6: Effective Date

Section 6 of SB 392 states that its provisions are effective on passage and approval of the bill. This provision is contrary to SMCRA and the Federal regulations that state that no change to law or programs can take effect for purposes of a State program until the amendment is approved by the Director. 30 CFR 732.17(g).

4. Section 7: Applicability

Section 7 of SB 392 states that its provisions apply to court action filed on or after the effective date of SB 392. This provision is contrary to SMCRA and the Federal regulations as it forces the changes to be effective before OSM reviews and approves the amendment, as required by 30 CFR 732.17(g), and section 723.17(i)(12) states that all decisions of the Secretary to approve or disapprove a program amendments must be published in the **Federal Register**. The Administrative Procedure Act generally requires a 30-day delay before a rule becomes effective. 5 U.S.C. 553(d).

IV. Summary and Disposition of Comments

We asked for initial public comments on the amendment during a public comment period that ended on November 6, 2023. We received 219 written comments during our initial comment period, and we received testimony from 23 individuals at a public hearing held in Billings, MT on November 1, 2023. (Administrative Record No. MT–043–19).

Due to the large number of comments, we have consolidated substantially similar comments to avoid redundancy. Over 200 commenters were opposed to the approval of this amendment and raised similar concerns, which are discussed below. Comments expressing generalized support for or opposition to the proposed amendment, generalized concerns about environmental impacts from mining operations, concerns about the mining industry, fossil fuel use, and the need for the United States to transition to renewable energy, general statements about the public's opposition to SB 392 and prior legislative efforts, comments about HB 576 and the definition of ''material damage to the hydrologic balance'' and hydrologic information requirements (which was discussed in a separate final rule (MT–042–FOR, published at 90 FR 3673 (Jan. 15, 2025))), 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/.*

Public Comment 1: There was consensus among a group of over 190 commenters in opposition to the proposed amendment that the ''loser pays'' provision of SB 392 would create a major financial burden for communities and landowners if their land or water is harmed by mining activity because it would limit court access to only wealthy individuals who can assume the financial risk of covering the legal fees of a coal company or regulatory agency.

OSM Response: OSM is disapproving Montana's proposed amendment. Please see OSM's discussion of the proposed changes to § 82–4–255 MCA in Section III(A).

Public Comment 2: This large group of commenters also stated that SB 392 is in direct violation of 43 CFR 4.1294 because this Federal regulation requires a judge to consider a party's identity and can only obligate a plaintiff to pay the defendants' attorney's fees if the plaintiff acted in bad faith.

OSM Response: OSM is disapproving Montana's proposed amendment and agrees that SB 392 is not in accordance with SMCRA and is inconsistent with the Federal regulations at 43 CFR 4.1294. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Public Comment 3: These commenters also opined that OSM has previously denied program amendments similar to Montana's proposed amendment; these commenters specifically referenced similar attempts in Alaska and Utah.

OSM Response: For the reasons described above, OSM is disapproving Montana's proposed amendment. As for the mentioned Alaska rule, on April 21, 2014, OSM sent a letter to Alaska under 30 CFR 732.17(e)(2) finding that Alaska House Bill 145 (2003) resulted in significant changes to how state courts authorize award fees under the Alaska program in civil actions brought to compel compliance with the program. We found that the changes were not in accordance with section 520(d) of SMCRA (30 U.S.C. 1270(d)), and requested that Alaska file a program amendment to correct the issue. In response, Alaska did not file an amendment to its program, but Alaska assured OSM that it ''would not seek to or obtain or object to attorney's fees awards in citizen suits under [Alaska House Bill 145] in a manner that is not in accordance with the federal SMCRA statute.'' And that the Alaska Supreme Court had previously found the Alaska program ''should be construed to be consistent with SMCRA.'' In Utah, a State Board reiterated that only the ''bad faith'' standard that had been approved by OSM as part of the Utah State Program could be used regardless of any inadvertent omission from the State compilation of regulations.

Public Comment 4: Multiple commenters opposed to the proposed amendment raised concerns that SB 392 would silence public participation because most landowners and communities would not risk going to court and potentially paying for a mining corporation's legal fees.

OSM Response: OSM is disapproving Montana's proposed amendment and agrees that SB 392 is contrary to public participation principles of SMCRA and the Federal regulations. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Public Comment 5: Another set of commenters opposed the proposed amendment, arguing that SB 392 seeks to supplant the decision of the judge by restricting the judge's ability to consider a party's identity when awarding court costs. These commenters noted that 30 U.S.C. 1270(d) and 1275(e) shows SMCRA's intentions that the judicial branch is the most appropriate entity to determine attorney fees, as the judge of the case is in the best position to determine whether a plaintiff should be liable for all legal fees and the judge is bound to follow the law at 43 CFR 4.1294.

OSM Response: OSM is disapproving Montana's proposed amendment and agrees that the judge must award court costs when deemed proper in line with SMCRA and 43 CFR 4.1294 or OSM-approved state counterpart laws and regulations. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Public Comment 6: Another set of commenters opposed the proposed amendment; they claimed that SB 392 could potentially put them and other irrigators, farmers, and ranchers out of business because coal pollution may damage the land and water that they depend on to make a living, and they will not be able to take the financial risk of bringing a coal company to court to rectify the issue.

OSM Response: OSM is disapproving Montana's proposed amendment. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Public Comment 7: Another set of commenters disagreed with the proponents of SB 392's argument that the proposed amendment would stop frivolous lawsuits; instead, these commenters argued that people with limited financial resources use litigation only as a last resort when other paths to justice have failed.

OSM Response: OSM is disapproving Montana's proposed amendment. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Public Comment 8: Another commenter opposed to the proposed amendment alleged that SB 392 would negatively affect a local government's ability to seek justice. Under proposed SB 392, a local government entity is very unlikely to pursue any civil action for harms caused by mining because it would potentially lose substantial taxpayer money if they were made to pay the regulatory authority or mining companies' attorney fees. This prevents local governments from pursuing good faith civil actions to protect their constituents from damage to land and water caused by mining.

OSM Response: OSM is disapproving Montana's proposed amendment. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Public Comment 9: Another commenter stated that SB 392 is directly contrary to section 520(d) of SMCRA (30 U.S.C. 1270(d)), which intended for the public to be protected from adverse fee awards unless their claims were deemed frivolous and made in bad faith.

OSM Response: Please note that sections 520(d) and 525(e) of SMCRA have the same fee shifting standards, but section 520(d) covers awards for citizen suits and section 525(e) covers awards for applications for review of an order or notice, investigation, or hearing. Montana's proposed changes at §§ 82–4–255 covers both types of actions. As stated above in OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A), OSM is disapproving Montana's proposed amendment because it is not in accordance with SMCRA and is inconsistent with the Federal regulations.

Public Comment 10: Another commenter opposed the proposed amendment and stated that SB 392 discourages citizens access to court to such a degree that it violates the equal protection clause of the U.S. Constitution. U.S. Const. amend. XIV § 1.

OSM Response: Because OSM is disapproving Montana's proposed amendment on the basis of SMCRA and the Federal regulations (*see* OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A)), it is unnecessary for us to respond to the alleged constitutional issue raised by this commenter.

Public Comment 11: Other commenters opposed to the bill stated that citizen participation was intentionally built into SMCRA, and the legislative history confirms that SMCRA was intended to provide ongoing protection to coalfield citizens through SMCRA. Furthermore, they claimed that Congress intended citizens to be a key enforcement and accountability tool for coal operations; therefore, SB 392 is in conflict with these intentions.

OSM Response: OSM notes the legislative history of SMCRA recognizes the importance of public participation in SMCRA proceedings. As stated in OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A), OSM is disapproving Montana's proposed amendment, and we agree that citizen participation is a fundamental aspect of SMCRA.

Public Comment 12: Several commenters stated that the immediate effective date and applicability of SB 392 are inconsistent with the Federal regulations, citing 30 CFR 732.17(g), which requires that no State coal regulations go into effect until approved by OSM, and 30 U.S.C. 1202(i), which requires that all appropriate procedures are followed for public participation in the revision of a State's program.

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

Public Comment 13: Multiple commenters stated that SMCRA and the Federal regulations require an asymmetrical fee regime. They noted that this is further evidenced by how, in the 1980s, OSM only conditionally approved Montana's program in part because the Montana program did not establish an asymmetrical fee regime in line with 30 U.S.C. 1270 and 1275 of SMCRA. *See* 47 FR 6266, 6266 (Feb. 11, 1982).

OSM Response: OSM conditionally approved Montana's program February 11, 1982, and required Montana to establish a fee award system in line with SMCRA and the Federal regulations before the State could achieve full approval of its coal regulatory program. 47 FR 6266, 6266 (Feb. 11, 1982). OSM is now disapproving Montana's proposed amendment related to fee recovery because, as proposed, it is inconsistent with the Federal regulations at 43 CFR 4.1294.

Industry Comment 1: A couple of commenters in favor of the proposed amendment claimed that SB 392 evens the playing field for all parties involved in litigation and that it will deter costly and meritless administrative and judicial litigation.

OSM Response: While we support the general proposition that meritless administrative and judicial litigation should be deterred, OSM is disapproving Montana's proposed amendment because it is plainly inconsistent with the Federal regulations. The Federal regulations and Montana's existing program already deter meritless lawsuits by allowing judges to award attorney fees to a permittee if the lawsuit is found to have been brought in bad faith. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Industry Comment 2: A commenter in favor of the proposed amendment stated that SB 392 adheres to 30 U.S.C. 1270(d) and 1275(e) of SMCRA. The commenter stated that those sections of SMCRA deem the appropriateness of an attorney fees award on the merits and nature or the proceedings, not the identity of the parties; thus, SB 392 is in line with these sections of SMCRA by not allowing a judge to consider the identities of the parties involved when awarding attorney fees.

OSM Response: In order to approve program amendment, OSM must determine that the proposal is both in accordance with SMCRA and consistent with the Federal regulations. 30 CFR 730.5, 732.15(a), and 732.17(h)(10). While we understand that this commenter argues that the program amendment is in accordance with SMCRA, even if that were true, the Montana program is plainly not consistent with 43 CFR 4.1294. On that basis alone, we must deny the program amendment. Please see OSM's discussion of the proposed changes to §§ 82–4–251, 82–4–252, and 82–4–255 MCA in Section III(A).

Industry Comment 3: A couple of commenters in favor of the proposed amendments stated that for citizen suits in particular, 30 U.S.C. 1270(d), requirements for granting attorney fees do not purport to govern a state court's award of attorney fees; thus, for citizen suits, these comments allege that SB 392 is consistent with SMCRA and Federal law and should be approved.

OSM Response: OSM disagrees with the commenters. SMCRA at 30 U.S.C. 1253(a) requires that each State that wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operation must submit a program demonstrating that such State has the capability of carrying out the provisions of SMCRA. This includes the provisions of 30 U.S.C. 1270, SMCRA's citizen suit provision. Montana must have provisions carrying out 30 U.S.C. 1270 at the State level, which would include requiring a State court to award attorney's fees for citizen suits in accordance with 30 U.S.C. 1270(d) and 43 CFR 4.1294.

Industry Comment 4: A commenter in favor of the proposed amendment stated that 43 CFR 4.1294 is inconsistent with SMCRA. They stated that 30 U.S.C. 1275(e) allows a judge to grant awards to either party whenever proper, but the counterpart Federal regulations at 43 CFR 4.1294 has an asymmetrical structure where upon a third party can receive an award in any situation where it can prove it made substantial contribution to the full and fair determination of the issues, but a permittee can only be awarded by a third-party if the third-party is found to have acted in ''bad-faith.'' Thus, according to the commenter, 43 CFR 4.1294 is invalid, and SB 392 should only need to be consistent with 30 U.S.C. 1275(e).

OSM Response: To the extent the commenter considered 43 CFR 4.1294 unlawful, any challenge to that Federal regulation needed to be brought within 60 days of the promulgation of the regulation. *See* 30 U.S.C. 1276(a). OSM first enacted this provision in 1978, and, at that time, OSM thoroughly considered comments that disagreed with this approach. 43 FR 34376 (Aug. 3, 1978). At that time, OSM found that the public participation aspect of SMCRA, when read as a whole and in conjunction with the legislative history, is key to the interpretation of the provision. 43 FR 34376, 34386 (Aug. 3, 1978). The provision was later revised in 1985 in response to the *Ruckelshaus* decision. 50 FR 47222 (Nov. 15, 1985). Because 43 CFR 4.1294 is still a current Federal regulation that is in effect, we cannot approve this program amendment, which is inconsistent with that Federal regulation. The State program amendment process is not the vehicle to collaterally challenge a duly promulgated Federal regulation. To the extent that the commenter continues to think that 43 CFR 4.1294 should be amended or repealed, SMCRA provides a process for persons to petition OSM to initiate a rulemaking. *See* 30 U.S.C. 1211(g) and 30 CFR 700.12.

Industry Comment 5: A commenter stated that the immediate effective date in SB 392 was a valid exercise of the State's sovereignty. The commenter stated that OSM's regulations at 30 CFR 732.17(g) are contrary to the principle of federalism and violate SMCRA. They also maintain that 30 U.S.C. 1255(a), which states that ''no State law or regulation . . . shall be superseded by any provisions of SMCRA or its implementing regulations . . . except insofar as such State law or regulation is inconsistent with the provisions of this act[,]'' supports their position. The commenter alleged that under SMCRA, a State's regulation may remain in place until it is found to be inconsistent with SMCRA. In support of this comment, the commenter cited to *Bragg* v. *W.VA. Coal Ass'n,* 248 F.3d 275, 295 (4th Cir. 2001), the ''major questions doctrine,'' and the Tenth Amendment to the U.S. Constitution.

OSM Response: Please see Section III(B) for our discussion on the issue of the effective date. In addition, the U.S. District Court for the District of Montana recently held that ''the 'immediately effective' provisions of [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).

We do not agree with the commenter that the Federal regulation at 30 CFR 732.17(g) violates SMCRA or that 30 CFR 732.17(g) violates the principles of cooperative federalism as set forth in SMCRA. The Supreme Court of the United States found that SMCRA does not violate the Tenth Amendment. *See Hodel* v. *VA. Surface Mining and Reclamation Ass'n,* 452 U.S. 264 (1981). SMCRA clearly does not allow proposed changes to an approved State program to go into effect before OSM reviews those changes to determine whether a State law or regulation is consistent with the provisions of SMCRA. 30 U.S.C. 1255(a) (''No State law or regulation . . . which *may* become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, *except insofar as such State law or regulation is inconsistent with the provisions of this act.*'' (emphasis added)). Despite this plain language, as noted in the previous comment response, to the extent the comment considers a Federal regulation to be unlawful, 30 CFR 732.17(g) in this case, the commenter must follow the procedures to either challenge the Federal regulation (30 U.S.C. 1276(a)) or seek to have us amend or repeal the regulation via a petition for a rulemaking (30 U.S.C. 1211(g) and 30 CFR 700.12). The State program amendment process is not the vehicle to collaterally challenge a valid Federal regulation.

Industry Comment 6: The same commenter also stated that, even if ''immediately effective'' provision is not allowed, OSM must complete and publish its review of SB 392 within seven months of receipt pursuant to 30 CFR 732.17(h)(13). For SB 392, the seventh-month date was January 22, 2024. Otherwise, OSM is indefinitely delaying SB 392's effectiveness by failing to act.

OSM Response: OSM strives to meet the deadlines it established in its regulations; however, when OSM promulgated 30 CFR 732.17(h)(13), it acknowledged that ''[f]or processing times specified in the regulations, the general rule is that a statutory or regulatory time period is not mandatory unless it both expressly requires an agency to act within a particular time period and also specifies a consequence for failure to comply. . . . Where no such consequence is specified, the time period is regarded as directory only, intended to guide the agency procedures but not to set inflexible requirements.'' 70 FR 61194, 61204 (Oct. 20, 2005). Given the nature of the legal issues raised by this proposed program amendment and our attempt to work with the State to resolve our concerns, this program amendment has taken longer to process.

Industry Comment 7: A commenter in favor of the proposed amendment stated that administrative and judicial litigation is a significant cost to agencies and, thus, to taxpayers. The commenter opined that SB 392 will deter frivolous litigation, which will give agencies more time and money to effectively protect the environment.

OSM Response: We agree that frivolous litigation is a drain on taxpayer resources and should be discouraged. However, we are charged with reviewing program amendments to determine if they are in accordance with SMCRA and consistent with the Federal regulations. As discussed above, this proposed program amendment is not consistent with the Federal regulations and is disapproved. To the extent that litigation has no sound basis (*i.e.,* frivolous), it is likely that a permittee or regulatory authority can still recover legal fees even under the bad faith standard.

Industry Comment 8: A commenter in favor of the proposed amendment stated that OSM has approved provisions similar to SB 392 in other State programs and, thus, SB 392 should be approved to be consistent with these decisions. These include amendments in Wyoming where the commenter stated that OSM approved an amendment that allows fees to be assessed against any party to litigation before Wyoming's Environmental Quality Council. 59 FR 53094 (Oct. 21, 1994); in Ohio where the commenter states OSM approved an amendment giving the Ohio Reclamation Board of Review or Chief the authority to award attorney fees for that party's participation in the enforcement proceedings. 62 FR 1668 (Jan. 13, 1997); and in New Mexico where the commenter stated OSM approved a rule allowing a permittee to be awarded by any party if the permittee initiated the proceedings, prevailed in whole or part, and achieves some degree of success in the case. 71 FR 69192 (Nov. 30, 2006).

OSM Response: For the 1994 Wyoming amendment, OSM disagrees that the Wyoming amendment allows fees to be assessed against any party in litigation before the Wyoming Environmental Quality Council. In the preamble to the 1994 amendment, a commenter stated they were concerned that the language in W.S. 35–11–437(f) was too broad by allowing an award to ''be assessed against either party as the court or council deems proper,'' and instead Wyoming should add language stating ''and shall include all classes of actions in which participants would be eligible for an award of costs and expenses under 43 CFR 4.1290 through 4.1295.'' OSM disagreed that such language needed to be added because, in 59 FR 3513 (Jan. 24, 1994), OSM had approved Wyoming regulations that are counterparts to 43 CFR 4.1290 through 4.1295. 59 FR 53094, 53096 (Oct. 21, 1994). These other provisions had not been amended, and, thus, Wyoming still has the necessary party classifications in its rules as required by 43 CFR 4.1294.

For the 1997 Ohio amendment, OSM agrees with the commenters assertion that the Ohio amendment allows the Ohio Reclamation Board of Review to award attorney fees for a party's participation, but OSM disagrees that a party's participation allows any party under any circumstance to be awarded attorney fees. The Ohio amendment and regulations, in line with 43 CFR 4.1294, categorizes acceptable awards by party type and circumstance. The State regulations at ORC 1513.13(E)(1)(b), for example, only allows a permittee to receive an award if the other party who initiated or participated in the appeal did so in bad faith. OSM discussed these findings in our acceptance of this amendment. 62 FR 1668, 1670 (Jan. 13, 1997).

For the 2006 New Mexico amendment, OSM disagrees with the commenters assertion that New Mexico's approved amendment allows a permittee to be awarded by any party if the permittee initiated the proceedings, prevailed in whole or part, and achieves some degree of success in the case. New Mexico Administrative Code 19.8.12.1204(E)(4) only allows a permittee to be awarded attorney costs when the regulatory authority or person acted in bad faith.

Federal Agency Comments

On June 27, 2023, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies that have an actual or potential interest in the Montana program (Administrative Record No. MT–043–05). On August 28, 2023, following the extension of the comment period for a further 60 days, we sent an additional request for comments on the amendment (Administrative Record No. MT–043–11). We did not receive any comments.

U.S. 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 (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 June 27, 2023, under 30 CFR 732.17(h)(11)(i), we sent a letter requesting comments from the EPA on the amendment (Administrative Record No. MT–043–05). On August 28, 2023, following the extension of the comment period for a further 60 days, we sent another request for comments on the Amendment (Administrative Record No. MT–043–11). 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 June 27, 2023, we requested comments on the amendment (Administrative Record No. MT–043–03, and MT–043–04). On August 28, 2023, following the extension of the comment period for a further 60 days, we sent another request for comments on the amendment (Administrative Record No. MT–043–09, and MT–043–10). Montana SHPO and ACHP did not provide a comment.

V. OSM's Decision

Based on the above findings, we are disapproving Montana's proposed amendment (MT–043–FOR) sent to us on June 22, 2023 (Administrative Record No. MT–043–01).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 926, that codify disapproval decisions concerning the Montana program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires that a State program must have rules and regulations that are in accordance with SMCRA and consistent with Federal regulations.

VI. Procedural Determinations

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

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

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

Executive Order 12866 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 are exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

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 disapproves an amendment to the Montana program submitted and drafted by the State to ensure that the State program is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

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. However, as we are disapproving the majority of the substantive changes made by this proposed amendment, our action will not have any significant effects on the regulation of surface coal mining operations within the Crow Ceded Strip. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

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

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

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 not a 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 upon 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 § 926.12 by adding paragraph (b) to read as follows:

§ 926.12 State program provisions and amendments not approved.

* * * * *

(b) The following amendment submitted by letter dated June 22, 2023, Administrative Record No. MT–043–01, which proposed changes to the Montana approved program at sections 82–4–251, 82–4–252, and 82–4–255 MCA, as a result of the Montana Legislature's 2023 passage of a Senate Bill (SB 392) relating to the awarding of attorney's fees, is not approved.

* * * * *

[FR Doc. 2026–17333 Filed 8–24–26; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2026–1060]

RIN 1625–AA08

Special Local Regulation; Choptank River, Cambridge, MD

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 waters of the Choptank River, near Cambridge, MD. This action is necessary to provide for the safety of life on these navigable waters during a power boat racing event on August 29, 2026 and August 30, 2026. This regulation prohibits persons and vessels from entering the regulated area unless specifically authorized by the Captain of the Port (COTP) Sector