

streams for the isolation and purification of protein concentrates and isolates under the following conditions:

(i) For resins that comply with the requirements in paragraph (d)(2)(i) of this section, the pH range for the resin shall be no less than 3.5 and no more than 9, and the temperatures of water and food passing through the resin bed shall not exceed 25 °C.

(ii) For resins that comply with the requirements in paragraph (d)(2)(ii) of this section, the pH range for the resin shall be no less than 2 and no more than 10, and the temperatures of water and food passing through the resin shall not exceed 50 °C.

\* \* \* \* \*

(d) \* \* \*

(2) The ion-exchange resin identified in paragraph (a)(20) of this section shall comply either with:

(i) The extraction requirement in paragraph (c)(4) of this section by using dilute sulfuric acid, pH 3.5 as a substitute for acetic acid; or

(ii) The extraction requirement in paragraph (c)(4) of this section by using reagent grade hydrochloric acid, diluted to pH 2, as a substitute for acetic acid. The resin shall be found to result in no more than 25 parts per million of organic extractives obtained with each of the following solvents: Distilled water; 15 percent alcohol; and hydrochloric acid, pH 2. Blanks should be run for each of the solvents, and corrections should be made by subtracting the total extractives obtained with the blank from the total extractives obtained in the resin test.

\* \* \* \* \*

Dated: March 17, 1999.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-121-FOR]

#### Pennsylvania Abandoned Mine Land Reclamation Program; Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the AMLR Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment adds a new section "F" entitled Government Financed Construction Contracts (GFCC) to authorize the incidental removal of coal and coal refuse at Abandoned Mine Land (AML) sites that would not otherwise be mined and reclaimed under the Title V program, along with relevant statutory provisions authorizing the AMLR Plan amendments. The proposed amendment also includes the Program Requirements and Monitoring Requirements related to the use of GFCC for that purpose. The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the government-financed construction exemption in Section 528 of SMCRA to be applied in cases involving less than 50% financing only in the limited situation where the construction constitutes a government approved and administered abandoned mine land reclamation project under Title IV of SMCRA. The amendment is also intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area.

**EFFECTIVE DATE:** March 26, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Biggi, Director, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrak) 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782-4036.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

#### **I. Background on the Pennsylvania Program**

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania AMLR Plan. Background on the Pennsylvania AMLR Plan, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33081). Subsequent actions concerning the AMLR Plan amendments are identified at 30 CFR 938.20 and 938.25.

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

#### **II. Description of the Proposed Amendment**

By letter dated November 21, 1997 (Administrative Record No. PA-855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed Program Amendment No. 2 to the Pennsylvania AMLR Plan. In addition, PADEP also submitted the following documents: Introduction; Basis of Authority for the Proposed Amendment; AML Amendment Conformance with 30 CFR Section 884.13; Assistant Counsel's Opinion of Authority for GFCC; PADEP Organization Chart; the Office of Mineral Resources Management Organization Chart; and Public Participation in Part F of the Reclamation Plan (Amendment No. 2). The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied in certain cases involving less than 50% government financing. Pennsylvania also proposed to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area.

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67590), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 28, 1998.

OSM's review of the proposed amendment determined that several items required clarification. As a result, a letter requesting clarification on three items pertaining to placement of excess spoil on Abandoned Mine Lands was sent to Pennsylvania dated June 5, 1998 (Administrative Record No. PA 855.08). Pennsylvania initially responded in its letter dated June 17, 1998, (Administrative Record No. PA 855.09), that it would require additional time to respond to OSM's request, and that it expected to provide a response by July 15. A response was received from Pennsylvania in its letter dated July 7,

1998 (Administrative Record No. PA-855.10). Therefore, OSM announced a reopening of the public comment period until August 12, 1998, in the July 28, 1998, **Federal Register** (63 FR 40237). No comments were received. However, OSM subsequently informed Pennsylvania that its program appeared to lack the statutory authority to implement the exemption for incidental coal removal pursuant to government-financed reclamation projects. Therefore, in letters, in letters dated October 8 and October 13, 1998 (Administrative Record No. PA 855.12), Pennsylvania subsequently submitted portions of its state law which it believes provides specific authorization to implement the proposed changes to AMLR Plan. Pennsylvania requested to have the statutory provisions included as part of Pennsylvania's Abandoned Mine Reclamation Plan Amendment. The proposed additions were published in the November 3, 1998, **Federal Register** (63 FR 59259), and the comment period was reopened to November 18, 1998. No comments were received. Since that time, national regulations known as the AML Enhancement Rule were published in the February 12, 1999, **Federal Register** (64 FR 7470) as a final rule to be effective March 15, 1999. OSM found that Pennsylvania's amendment did not include certain aspects of the AML Enhancement Rule. Therefore, in a letter to OSM dated March 2, 1999 (Administrative Record No. PA 855.15), Pennsylvania specified the additional requirements it proposed to be included in its amendment.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment. The proposed amendment consists of new Part F, Program Requirements, and a Monitoring Program for GFCC's, both to be added to the AMLR Plan. The proposed amendment also consists of amendments to the Pennsylvania state code, at 52 P.S. 1396.3 and 1396.4h.

#### *AMLR Plan, Part F: Government Financed Construction Contracts*

(1) *Incidental Coal Removal*—PADEP proposes to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its

management of the permitting process and knowledge of the status of the AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands which involve some incidental removal of coal. Following are (3) examples of situations where PADEP proposes to utilize the GFCC to address AML liabilities.

(a) *Refuse Pile Reclamation*—As a result of an extensive history of mining in Pennsylvania, thousands of coal refuse piles are scattered throughout the state in both the bituminous and anthracite fields. In many cases these piles are unsightly, unsafe and are adding to the sedimentation and mine drainage pollution of Pennsylvania streams in areas that are economically deprived because of poor water quality and general aesthetics.

Depending on the method used to clean the coal and the volume of material available, these piles have varying degrees of value. Those piles that are larger in volume and higher in quality have traditionally been permitted under the Title V Program while piles of smaller, poorer quality have remained virtually untouched and are not and will not be likely candidates for permitting. These are the types of piles that are generally suitable for use in fluidized-bed combustion processes employed at congeneration plants and the types of piles that will be reclaimed under the proposed program.

(b) *Reclamation of Abandoned Deep Mines*—An example specific to this initiative would be represented by an abandoned deep mine that includes subsidence problems and acid mine drainage discharges. The reclamation of this type of site would involve the daylighting of the deep mined area, the incidental and necessary removal of any coal encountered, the placement of alkaline material over the area of deep mine affected, and the construction of some type of passive treatment system to insure the reduction of pollutional loading from the discharges. Daylighting is the method of removing coal from a deep mine by first removing the overburden. Because of the limited amount of coal available, and the potential water quality liability for the discharges, this sample site would not be a candidate for a surface mine permit under the Title V Program.

(c) *Unreclaimed High Walls Adjacent to Active Mine Sites*—Nearly all permits issued under the Title V program include varying levels of re-mining or are located within close proximity to previously affected areas located outside of permit boundaries. In some cases coal

along the crop barrier may have gone unmined because of poor quality or high moisture content. In other cases an additional cut taken off the highwall may facilitate a reclamation plan that results in a more suitable post-mining land use or may facilitate an abatement project (alkaline addition—highwall drains, etc.) that will result in improved water quality. In those situations where a Title V permit is impractical due to limited coal recovery or poor coal quality, PADEP proposes to direct reclamation of these sites through a GFCC which allows for the incidental removal of coal to complete reclamation of the AML lands.

(2) *Placement of Excess Spoil on Adjacent AML Lands*—PADEP proposes to authorize the placement of excess spoil from active mining operations on AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and the knowledge of the status of AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands adjacent to permitted operations. The institution of this program will allow PADEP to maximize its reclamation efforts on AML lands at no expense to the funding sources for PADEP's AML program. Savings to the AML program would be used for reclamation at other sites throughout the Commonwealth.

Pennsylvania was asked to clarify which requirements in the approved program will apply to the placement of excess spoil on abandoned mine lands as referenced in the proposed amendment at page 7 where it is stated that the placement of excess spoil on adjacent AML lands would be approved AML reclamation projects and would therefore encompass the same time-tested administrative, financial, contractual and environmental safeguards as any other approved AML projects in the Commonwealth. OSM requested Pennsylvania either require that these projects be handled in the same manner as Federally-funded AML projects, or otherwise identify the administrative, financial, contractual and environmental safeguards that will be applied to these "no-cost" GFCC's, and show how these safeguards will ensure the same level of environmental protection as that provided by Federally-funded AML projects. Pennsylvania responded that these projects will be handled in the same manner as Federally-funded AML projects. Furthermore, projects that involve the support and involvement of the District Mining Offices will be

subject to the additional administrative requirements designed to address the coordination between the Bureau of Abandoned Mine Reclamation and the District Mining Offices. Pennsylvania revised page 7 of its proposed amendment to include these clarifications. (Administrative Record No. PA-855.10).

Pennsylvania was asked to include in its AMLR Plan provisions to ensure that excess spoil from Title V operations will not be placed on approved AML sites in amounts greater than necessary to address the AML impacts and problems. Pennsylvania responded that it modified its amendment by adding the following sentence to the end of the first paragraph on page 6, C.1; after the fourth sentence of the first full paragraph on page 7; after the first sentence of the last paragraph on page 9; after the first sentence of Part F(2) on page 13; and after the first sentence of third paragraph under Program Requirements on page 15: "The amount of excess spoil from title V operations will not exceed that amount necessary to address the AML impacts and problems." (Administrative Record No. PA-855.10).

#### *AMLR Plan, Part F: Program Requirements*

A. The Department will solicit and accept proposals to enter into a GFCC for the purpose of reclamation of abandoned mine lands, some of which may involve the incidental and necessary removal of coal.

To be an "eligible person", for purposes of entering into a GFCC, the person must clear the Department's standard compliance with the Applicant Violator System (AVS) checks. In addition, the person must clear a check through the Commonwealth's contractor responsibility program. (See summary of 52 P.S. 1396.4h, under the heading "STATUTORY PROVISIONS", below.)

A GFCC under the terms of this amendment, is limited to those situations where a contractor proposes to enter into an agreement to perform reclamation on abandoned mine lands with the incidental and necessary removal of coal or to use excess spoil from a permitted site to reclaim an abandoned mine land. Reclamation should also include, where feasible, the installation of passive treatment systems and/or other measures to mitigate pre-existing discharges. No processing of coal will be conducted on-site.

Coal refuse ash may be returned to the site consistent with a general permit issued by the PADEP. General permits are issued by Pennsylvania's Bureau of Water Quality Protection as authorized

by its Solid Waste Management Act (35 P.S. §§6018.101 *et seq*) and 25 Pa Code Chapters 77, 86-90 and 271.

Sludge may be utilized for site reclamation consistent with a beneficial use order or land reclamation permit. Beneficial use and land reclamation permit are also authorized by Pennsylvania's Solid Waste Management Act.

PADEP will conduct an expeditious review of the proposal for adequacy of the monitoring plan, erosion and sedimentation control plan, operation plan, and reclamation plan. Particular attention will be given to the feasibility of installing passive treatment systems and/or other measures to mitigate pre-existing discharges. Any deficiencies are to be communicated to the contractor in writing.

Even though reclamation activities under a GFCC are not subject to the barrier prohibitions of 25 Pa. Code 86.102, precautions will be designed in the operation and reclamation plans to minimize any potential adverse impacts on areas that would be considered prohibited areas under a coal mining permit.

A performance bond in an amount determined by the PADEP shall be submitted on forms provided by the PADEP for all GFCC sites where bond is required. Specifically, a performance bond will be required on GFCC's which involve coal removal which is incidental to reclamation. PADEP stated that it has developed a bond rate schedule to be used to establish the bond amount for each GFCC. The bond rate schedule is based on acreage involved and PADEP's experience in reclaiming abandoned mine lands. The authority for requiring a bond is contained in the statutes cited in the legal opinion attached to the proposed program amendment initially submitted. (Administrative Record No. PA-855.00, Exhibit 2B), PADEP revised pages 15 and 16 of its proposed amendment to include these clarifications. Should a contractor default on a GFCC or otherwise fail to perform the required reclamation, PADEP will make a demand upon the surety to fulfill its performance bond obligations to either complete the reclamation required by the GFCC or to pay that amount of bond money necessary for PADEP to hire another contractor to complete the remaining contract reclamation work.

A consent order and agreement, in conjunction with a permit condition, will be used to ensure that AML sites which receive excess spoil from a Title V site are fully reclaimed in accordance with the contract standards and/or the consent order. The permit condition

will provide that the operator will use no more than that amount of excess spoil which is necessary to reclaim the AML site and that the operator's failure to complete the required reclamation of the AML site prohibits release of the bond on the Title V permit. An operator's failure to complete reclamation of the AML site would also be a violation of its permit, exposing the operator to civil penalties and/or bond forfeiture and enforcement of the consent order and agreement.

B. A proposal for a GFCC will consist of a face sheet and the following Pennsylvania Surface Mine Permitting modules as applicable:

- Module #1—Ownership and Right of Entry
- Module #2—Environmental Resource and Operations Map
- Module #3—Hydrology
- Module #4—Operational Information
- Module #5—Streams
- Module #25—Flyash
- Module #27—Sewage Sludge

(a) The ownership and control information is to be entered into the Land Use Management Information System (LUMIS) and a compliance check/AVS check run. If a "bar" is found, the proposal is to be returned. If "no bar" is found, the proposal will be accepted and given an ID number.

(b) All proposals will be subject to the consultation requirements with other state agencies as prescribed by Pennsylvania's approved AMLR Plan.

(c) The PADEP will advertise receipt of the proposal. This notice shall be run once a week for two weeks in a newspaper local to the project area.

(d) The municipality and the county in which the site is located will be notified, by certified letter, that the PADEP received a proposal for a GFCC to perform reclamation activities within the municipality.

(e) Upon final execution of the contract, PADEP will notify the host municipality and county by certified mail of the action; notify any agencies who submitted comments; notify appropriate state Legislators, in writing, of the action; and issue a press release of the action (The Regional Community Relations Coordinator will assist in preparation of this release). If a Small Projects Permit is issued with the executed contract, notice must be made in the Pennsylvania Bulletin.

#### *AMLR Plan, Part F: Monitoring Program for GFCC's*

The PADEP will conduct monthly inspections of all GFCC's until the site is determined to be stabilized by vegetation. At that time, the PADEP will

continue to conduct regular inspections on a quarterly basis until the contract receives final approval and final bond release.

The inspection forms and related instructions to be utilized to monitor the GFCC program are part of the amendment.

According to the PADEP, the proposed program amendment would offer solutions to the following problems that exist throughout Pennsylvania's coal field:

(1) Conditions which create a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous conditions, including but not limited to any unguarded or unfenced open pit area, highwall, water pool, spoil bank and culm bank, abandoned structure, equipment, machinery, tools, or other property used in or resulting from surface mining operations, or other serious hazards to public health or safety.

(2) AMD pollution and sedimentation into Pennsylvania's streams.

(3) Unsightly, and unproductive property that has been largely unreclaimed through either the AML or active mining programs.

(4) Inadequate funding to address the above three Pennsylvania reclamation liabilities.

Generally speaking, the above conditions exist in areas that are economically depressed and environmentally damaged. The necessary reclamation represents an AML liability well in excess of hundreds of millions of dollars. The proposed program offers an additional solution to Pennsylvania's obligation to provide clean water and a safe and healthy environment to its citizens.

#### *Statutory Provisions*

At 52 P.S. 1396.3, Pennsylvania proposes to modify its definition of the term "surface mining activities", to add four exceptions. The effect of the modification will be that the excepted activities" will not be required to apply for and receive surface coal mining permits, and will not be required to comply with the full panoply of performance standards contained in the Pennsylvania surface coal mining regulatory program. Currently, Pennsylvania's definition of "surface mining activities" is as follows:

"Surface mining activities" shall mean the extraction of coal from the earth or from waste or stockpiles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip,

auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The proposed amendment, which includes four exceptions to the definition of "surface mining activities" states that:

"Surface mining activities" shall not include any of the following: (1) Extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8 [52 P.S. 1396.4h]. (2) Extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board. (3) The reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the department. (4) Activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations. The Director finds that exception number two, the extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board, is substantively identical to, and therefore no less stringent than, SMCRA Section 528(2), and she is therefore approving it. Prior to implementation of this exception, however, Pennsylvania must submit to OSM and receive OSM approval of the implementing regulations promulgated by the Environmental Quality Board. The Director finds that exception number three, the reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the department, is not inconsistent with the Federal definition of "surface coal mining operations" at SMCRA Section 701(28), and she is therefore approving it. The Director finds that exception number four, activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations, is not inconsistent with SMCRA or the

Federal regulations, and she is therefore approving it. Prior to implementing this exception, however, Pennsylvania must submit to and receive from OSM approval of any implementing regulations it promulgates. Exception number one, extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8 [52 P.S. 1396.4h], is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Also at 52 P.S. § 1396.3, Pennsylvania proposes to define the term "government-financed reclamation contract", as follows:

"Government-financed reclamation contract" shall mean:

(1) For the purposes of Section 4.8 [52 P.S. 1396.4h], a Federally-funded or state-funded and approved abandoned mine reclamation contract entered into between the department and an eligible person or entity who has obtained special authorization to engage in incidental and necessary extraction of coal refuse pursuant to government-financed reclamation which is either:

(i) a State-financed reclamation contract less than or equal to fifty thousand dollars (\$50,000) total project costs, where up to five hundred (500) tons of coal is extracted, including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract;

(ii) a State-financed reclamation contract authorizing the removal of coal refuse, including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area;

(iii) a State-financed reclamation contract greater than fifty thousand dollars (\$50,000) total project costs or a federally-financed abandoned mine reclamation project: Provided, That the department determines in writing that extraction of coal is essential to physically accomplish the reclamation of the project area and is incidental and necessary to reclamation, or

(iv) federally financed or state-financed extraction of coal which the department determines in writing to be essential to physically extinguish an abandoned mine fire that poses a threat to the public health, safety and welfare.

(2) For purposes of determining whether or not extraction of coal is

incidental and necessary under section 4.8, the department shall consider standard engineering factors and shall not in any case consider the economic benefit deriving from extraction of coal. Necessary extraction of coal shall in no case include:

(i) the extraction of coal in an area adjacent to the previously affected area which will be reclaimed; or

(ii) the extraction of coal beneath the previously affected area which will be reclaimed. This definition is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Also at 52 P.S. 1396.3, Pennsylvania proposes to define the term "no-cost reclamation contract," as follows:

"No-cost reclamation contract" shall mean a contract entered into between the department and an eligible person for the purpose of reclaiming unreclaimed abandoned mine lands and which does not involve the expenditure of Commonwealth funds. This definition is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Finally, at 52 P.S. 1396.4h [also referred to as "section 4.8"], Pennsylvania proposes to add a new section entitled "Government-financed reclamation contracts authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse" which states that:

(a) No person may engage in the extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract without a valid surface mining permit issued pursuant to this act unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The department shall not be required to grant a special authorization to any eligible person. The department may, however, in its discretion, grant a special authorization allowing

incidental and necessary extraction of coal or allowing removal of coal refuse pursuant to a government-financed reclamation contract in accordance with this section.

(b) Only eligible persons may secure special authorization to engage in incidental and necessary extraction of coal or to engage in removal of coal refuse pursuant to a government-financed reclamation contract. A person is eligible to secure a special authorization if he can demonstrate, at a minimum, to the department's satisfaction that:

(1) The contractor or any related party or subcontractor which will act under its direction has no history of past or continuing violations which show the contractor's lack of ability or intention to comply with the acts or the rules and regulations promulgated thereunder, whether or not such violation relates to any adjudicated proceeding agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, affiliate or person by or under common control with the contractor.

(2) The person has submitted proof that any violation related to the mining of coal by the contractor or any related party or subcontractor which will act under its direction of any of the acts, rules, regulations, permits or licenses of the department has been corrected or is in the process of being corrected to the satisfaction of the department, whether or not the violation relates to any adjudicated proceeding, agreement, consent order or decree or which resulted in a cease order or civil penalty assessment. For purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the contractor.

(3) The person has submitted proof that any violation by the contractor or by any person owned or controlled by the contractor or by a subcontractor which acts under its direction of any law, rule or regulation of the United States or any state pertaining to air or water pollution has been corrected or is in the process of being satisfactorily corrected.

(4) The person or any related party or subcontractor which will act under the direction of the contractor has no outstanding unpaid civil penalties which have been assessed for violations of either this act or the act of June 22, 1937 (Pub. L. 1987, No. 394), known as "The Clean Streams Law" (35 P.S.

§ 691.1 *et seq.*), in connection with either surface mining or reclamation activities.

(5) The person or any related party or subcontractor which will act under the direction of the contractor has not been convicted of a misdemeanor or felony under this act or the acts set forth in subsection (e) and has not had any bonds declared forfeited by the department.

(c) Any eligible person who proposes to engage in extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract may request and secure special authorization from the department to conduct such activities under this section. The department may issue the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction of coal or authorizing removal of coal refuse and the person requesting such authorization has affirmatively demonstrated to the department's satisfaction that he has satisfied the provision of this section. A special authorization shall only be granted by the department prior to the commencement of extraction of coal or commencement of removal of coal refuse on a project area. In order to be considered for a special authorization by the department, an eligible person must demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned mine lands.

(2) The extraction of coal will be incidental and necessary, or the removal of coal refuse will be required, to accomplish the reclamation of abandoned mine lands pursuant to a government-financed reclamation contract.

(3) Incidental and necessary extraction of coal or in removal of coal refuse will be confined to the project area being reclaimed.

(4) All extraction of coal or in removal of coal refuse and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to:

(i) The applicable environmental protection performance standards promulgated in the rules and regulations relating to surface coal mining listed in the government-financed reclamation contract; and

(ii) Additional conditions included in the government-financed reclamation contract by the department.

(d) The contractor will pay any applicable per-ton reclamation fee established by OSM for each ton of coal extracted pursuant to a government-financed reclamation project.

(e) Prior to commencing extraction of coal or commencement of removal of coal refuse pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, "The Clean Streams Law", the act of January 8, 1960 (1959 P.L. 2119, No. 787) (35 P.S. section 4001 *et seq.*), known as the "Air Pollution Control Act", the act of September 24, 1968 (P.L. 1040, No. 318) (52 P.S. § 30.51 *et seq.*), known as the "Coal Refuse Disposal Control Act," where applicable, the act of November 26, 1978 (P.L. 1375, No. 325) (32 P.S. § 693.1 *et seq.*), known as the "Dam Safety and Encroachments Act", and, where applicable, the act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. § 6018.101 *et seq.*), known as the "Solid Waste Management Act". An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts herein above enumerated. For government-financed reclamation contracts other than a no-cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above. The performance bond which is provided by the contractor under a contract other than a government-financed reclamation contract shall be deemed to satisfy the requirements of this section provided that the amount of the bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection. For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the

department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

(f) The department shall insert in government-financed reclamation contracts conditions which prohibit coal extraction pursuant to government-financed reclamation in areas subject to the restrictions of Section 4.2 (52 P.S. § 1396.4b.), except as surface coal mining is allowed pursuant to that section.

(g) Any person engaging in extraction of coal pursuant to a no-cost government-financed reclamation contract authorized under this section who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate supply adequate in quantity and quality for the purposes served.

(h) Extraction of coal or removal of coal refuse pursuant to a government-financed reclamation contract cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal. Nothing in this section shall prohibit the department's entry onto land where such entry is necessary in the exercise of police powers.

This new section is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

#### *Analysis of Proposal To Allow Incidental Coal Removal Pursuant to GFCC's*

Section 528(2) of SMCRA provides an exemption from the requirements of SMCRA for coal extraction incidental to government-financed highway or other construction under regulations established by the regulatory authority. The amendments to Pennsylvania's statutes and to its AMLR Plan would allow incidental coal extraction pursuant to the reclamation of abandoned sites without the need of a surface coal mining permit. The State contends that this amendment is consistent with the provisions of section 528(2) of SMCRA and, therefore, not subject to SMCRA.

The Federal regulations at 30 CFR Part 707 set forth the procedures for determining those surface coal mining and reclamation operations which are exempt from the Act and the Federal regulations because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction. Under

30 CFR 707.5, government-financed construction, generally, means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. However, OSM has recently promulgated a revision to the definition of "government financed construction" at 30 CFR 707.5. The new revision allows incidental coal extraction to be performed pursuant to approved reclamation projects under Title IV of SMCRA, even where the government funding portion is less than 50%. 64 FR 7470, February 12, 1999. Therefore, Pennsylvania's proposed statutory and AMLR Plan amendments are no less than the newly promulgated revision to the Federal definition of "government financed construction", insofar as the State provisions apply to approved Title IV projects. The Director also finds that the AMLR plan amendment is no less effective than the federal regulations at 30 CFR 707.12, pertaining to the information required to be maintained on site, with respect to approved Title IV projects. However, other new Federal provisions were enacted in the same rulemaking. These new provisions, at 30 CFR 874.17, contain consultation responsibilities and concurrence obligations, as well as documentation requirements, for the Title IV and Title V divisions of State Regulatory Authorities as a prerequisite to approval of incidental coal extraction without a permit, on approved Title IV reclamation projects which are less than 50% government financed. Pennsylvania's proposed amendment already contained counterparts to the requirements contained in 30 CFR 874.17(b), (d)(3) and (d)(4). Also, since our approval of the incidental extraction of coal on projects which are less than 50% government financed is limited to approved AML projects under Title IV, the projects will necessarily be conducted in accordance with 30 CFR Subchapter R, thereby fulfilling the requirement at 30 CFR 874.17(d)(2). Finally, in a letter dated March 2, 1999 (Administrative Record No. PA-855.15), Pennsylvania proposed to amend its AML Plan to require that any Title IV reclamation projects to require compliance with the remaining portions of 30 CFR 874.17. Therefore, the Director finds that the amendment submitted by Pennsylvania, including the March 2, 1999, modification, complies with 30 CFR 874.17, to the extent that it applies to the incidental extraction of coal on approved Title IV projects which are less than 50% government financed.

A discussion of the support statutory revisions follows.

At 52 P.S. 1396.3, Pennsylvania proposes an exception from the definition of "surface mining activities" for the extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract. Also at 52 P.S. 1396.3, Pennsylvania proposes a definition of "government-financed reclamation contract." (This definition is summarized above.) To the extent that these provisions apply to the incidental extraction of coal pursuant to approved AML projects, they are no less stringent than Section 528(2) of SMCRA, for the reasons discussed in the preceding paragraphs under this heading. These projects may be less than 50% government financed, and may be approved by Pennsylvania at any time after the effective date of this final rule. Our approval includes state financed reclamation projects, which receive no federal AML funding, so long as those projects are approved under title IV and the federal regulations at 30 CFR Subchapter R. In other words, the State need not actually use federal AML moneys to fund these projects, but the projects must first comply with the criteria in SMCRA and the federal regulations which govern eligibility for federal funding. Projects that are State financed, but that do not receive Title IV approval, qualify for the government financed construction exemption only if they are at least 50% government financed. Therefore, the director is not approving the definition of "government-financed reclamation contract" to the extent that it proposes to allow incidental coal removal, pursuant to state financed reclamation contracts which are less than 50 percent government financed, on sites which have not been approved as Title IV AML projects.

In addition, the Director is not approving the portions of the definition of "government-financed reclamation contract" which refer to "no-cost contracts." (See the proposed definition of "no-cost reclamation contract", which is set forth in its entirety, above.) In order to qualify as "government-financed construction", projects must receive some funding through appropriations from the government financing agency's budget. Any expenses incurred directly or indirectly by the AML agency, including the costs of project design, solicitation, management and oversight, qualify as government financing. However, Pennsylvania defines no-cost contracts as those contracts that do not involve the expenditure of any government funding, either as direct payments or as

indirect expenses such as those listed above. Therefore, Pennsylvania's definition of "government financed reclamation contract" is less effective than the Federal definition of "government-financed construction", at 30 CFR 707.5, to the extent that it would allow incidental coal extraction or coal refuse removal, without a permit, pursuant to no-cost contracts. Specifically, the Director is not approving the following language in the definition of "government-financed reclamation contract":

In paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and,

In paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area."

In addition, the Director is not approving the definition of "no-cost reclamation contract", at 52 P.S. 1396.3.

Finally, the Director is requiring Pennsylvania to amend 52 P.S. 1396.3 to delete the above-referenced language.

At 52 P.S. 1396.4h, also known as "Section 4.8", which is set forth in its entirety above, Pennsylvania has established criteria for determining eligibility for receipt of a special authorization to conduct incidental coal extraction or coal refuse removal pursuant to a government-financed reclamation contract. This provision also requires eligible persons to demonstrate that coal extraction or refuse removal will be incidental and necessary to reclamation, which shall be the primary purpose of the contract, and that it will comply with environmental protection performance standards listed in the contract. Next, the provision requires that applicable reclamation fees be paid for each ton of coal extracted, sets forth criteria for the posting of performance bonds, prohibits the incidental extraction of coal and removal of coal refuse in areas subject to other restrictions on coal extraction, pursuant to 52 P.S. 1396.4b, and requires surface owner consent for right of entry and for extraction of coal. These provisions, which are contained in subsections "a" through "d", "f" and "h" of 52 P.S. 1396.4h, have no Federal counterparts. However, they are not inconsistent with Section 528(2) of SMCRA or 30 CFR Part 707, and add restrictions to the issuance of "special

authorizations" which should help to ensure that proposed projects which are truly "surface mining activities" will be required to obtain full surface mining permits. Therefore, the Director is approving these subsections. She is also approving subsection "e" for the same reasons, except for the following language, pertaining to "no-cost contracts", which is not approved:

For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

Also, the Director is not approving any portion of subsection "g", since it pertains solely to extraction of coal pursuant to no-cost contracts. Finally, the Director is requiring the State to amend 52 P.S. 1396.4h to delete the above-quoted portion of subsection "e", and to delete subsection "g" in its entirety.

#### *Analysis of Proposal to Allow Placement of Excess Spoil on Adjacent AML Lands*

Placement of excess spoil on adjacent abandoned mine land has been addressed previously in other rulemaking. Specifically, in a July 9, 1991, letter to Ohio (Administrative Record No. OH-1546), the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. OSM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254-69255, October 20, 1980; 46 FR 5919, January 21, 1981; and 55 FR 21328-21329, May 23, 1990).

In the January 21, 1981, **Federal Register** announcing approval of the West Virginia program (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under Title V of SMCRA. In the May 23, 1990, **Federal Register** (55 FR 21329), OSM found that West Virginia's proposed

disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore approximate original contour (AOC) on or otherwise reclaim the active mine. In addition, as stated in the May 23, 1990, **Federal Register**, fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The May 23, 1990, finding, however, did not prohibit the possibility that "no-cost reclamation" contracts, which allow spoil disposal on AML sites not included in Federally funded grants, could be approved in the future. In order to gain OSM approval, however, "no-cost reclamation" amendments would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore AOC and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. See OSM Director's July 9, 1991, letter to Ohio (Administrative Record No. OH-1546). In short, "no cost reclamation" amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project.

The Director finds that Pennsylvania's proposal regarding placement of excess spoil, at Part F, meets these requirements, for the reasons set forth below.

First, Pennsylvania's proposal requires that the amount of excess spoil placed on an abandoned site will not exceed that required to restore that site to AOC. Also, the proposal limits the amount of excess spoil placed on AML sites to that amount needed to address the AML impacts and problems. Therefore, valley, head-of-hollow and durable rock fills will not be constructed on these AML sites, because the amount of material deposited would exceed that necessary to address the AML impacts and problems.

Second, the proposal requires that the plan for excess spoil placement pursuant to a GFCC will be developed and implemented in the same manner as is done for Federally funded AML projects. The environmental safeguards that therefore will apply to GFCC's should ensure that the excess spoil is placed in an environmentally sound fashion, and that placement will not

destroy or degrade features of environmental value.

Third, and finally, the Director finds that the proposal contains sufficient performance incentives to require compliance with all applicable requirements, since a consent order and agreement, in conjunction with a permit condition, will be used to ensure that AML sites which receive excess spoil from a Title V site are fully reclaimed. The permit condition will provide that the operator will use no more than that amount of excess spoil which is necessary to reclaim the AML site and that the operator's failure to complete the required reclamation of the AML site prohibits release of the bond on the Title V permit. An operator's failure to complete reclamation of the AML site would also be a violation of its permit, exposing the operator to civil penalties and/or bond forfeiture and enforcement of the consent order and agreement. Finally, the PADEP always has AML grant funds available to reclaim these sites in the event that the operator defaults on the terms of its contract.

#### *General Findings*

Pursuant to 30 CFR 884.15(a), an AMLR Plan amendment which changes the scope, objectives or major policies followed by the State in the conduct of its reclamation program must meet the requirements of 30 CFR 884.14 before OSM may approve it. Accordingly, OSM makes the following findings:

1. OSM offered the public an opportunity for a public hearing on the amendment in the December 29, 1997, **Federal Register** Notice, (62 FR 67590), thereby complying with the requirement of 30 CFR 884.14(a)(1);

2. In both the December 29, 1997 (62 FR 67590) and July 28, 1998 (63 FR 40237) **Federal Register** Notices, OSM solicited the views of other Federal agencies having an interest in the AMLR Plan amendment, and OSM considered the views of those agencies in reaching its decision, thereby complying with the requirements of 30 CFR 884.14(a)(2);

3. PADEP has provided evidence of the State's legal authority, policies and administrative structure necessary to carry out the proposed AMLR Plan amendment, thereby complying with the requirements of 30 CFR 884.14(a)(3);

4. The AMLR Plan amendment meets all of the requirements of the Federal Regulations at Title 30, Chapter VII, Subchapter R, "Abandoned Mine Land Reclamation", including the newly promulgated "AML Enhancement Rule" at 30 CFR 874.17, and therefore complies with the requirements of 30 CFR 884.14(a)(4);

5. Pennsylvania has an approved State regulatory program, as announced in the July 30, 1982, **Federal Register** Notice (47 FR 33050), as required by 30 CFR 884.14(a)(5); and,

6. The AMLR Plan amendment is in compliance with all applicable State and Federal laws and regulations, and therefore complies with the requirements of 30 CFR 884.14(a)(6).

Based upon all of the above considerations, the Director is approving Part F.

#### **IV. Summary and Disposition of Comments**

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Comments were received from the Pennsylvania Coal Association, the Anthracite Region Independent Power Producers Association, and the Indiana Coal Council, Inc. (Administrative Record Nos. PA-855.05, 855.06 and 855.07, each dated January 28, 1998, respectively). In each case, comments regarding the proposed amendment were favorable and supportive, and encouraged OSM's approval. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

#### *Federal Agency Comments*

Pursuant to 30 CFR 884.14(a)(2), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Pennsylvania AMLR Plan. The Mine Safety and Health Administration (MSHA) responded in its letter dated December 15, 1997, (Administrative Record No. PA-855.03) that it saw no conflict with Coal Mine Safety and Health Impoundment or Refuse Pile Regulations under 30 CFR 77.214, 215 and 216. No other comments were received.

#### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

#### **V. Director's Decision**

Based on the above finding(s), the Director approves the proposed



amendment as submitted by Pennsylvania on November 21, 1997, clarified on July 7, 1998, and revised on October 8 and October 13, 1998, and March 2, 1999 with the exceptions noted below. In particular, the Director is approving Part F, which authorizes the use of GFCCs which involve incidental coal removal, or which allow the placement of excess spoil on adjacent Abandoned Mine Lands. In addition, the Director is approving the statutory provisions submitted by the State, consisting of portions of 52 P.S. 1396.3 and a new section, 52 P.S. 1396.4h, with the exceptions noted below.

The Director is not approving the definition of "government-financed reclamation contract", at 52 P.S. 1386.3, to the extent that it proposes to allow incidental coal removal, pursuant to state financed reclamation contracts which are less than 50 percent government financed, on sites which have not been approved as Title IV AML project. Projects that are state financed, but that do not receive Title IV AML approval, can include incidental coal removal if the project are at least 50% government financed. In addition, the Director is not approving the portions of the definition of "government-financed reclamation contract" which refer to "no-cost contracts." Specifically, the Director is not approving the following language in the definition of "government-financed reclamation contract":

In paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and,

In paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area."

In addition, since the Director is not approving the use of no-cost reclamation contracts that involve incidental extraction of coal or coal refuse, she is also not approving the definition of "no-cost reclamation contract", at 52 P.S. 1396.3.

Also, the Director is not approving the following portions of subsection "e" of 52 P.S. 1396.4h:

For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned

mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

Finally, the Director is not approving any portion of 52 P.S. 1396.4h., subsection "g", since it pertains solely to extraction of coal pursuant to no-cost contracts.

The Director is requiring Pennsylvania to amend 52 P.S. 1396.3 and 1396.4h to delete the above-referenced language.

The Federal regulations at 30 CFR part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State AMLR Plans and State Regulatory Program amendment processes and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standard is required by SMCRA.

## VI. Procedural Determinations

### *Executive Order 12866*

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, no by OSM. These standards are also not applicable to the actual language of state regulatory programs and program amendments for the same reason. Decisions on State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and the Federal regulations at 30 CFR Part 884.

Similarly, under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(1), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)), and since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute 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 contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior has determined that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 5, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII,

Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 938—PENNSYLVANIA**

1. The authority citation for part 938 continues to read as follows:

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

2. Section 938.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 938.15 Approval of Pennsylvania regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
October 8, 1998	March 26, 1999	52 P.S. §§ 1396.3, 1396.4h.

3. Section 938.16 is amended by adding new paragraphs (cccc), (dddd), (eeee) and (ffff) to read as follows:

(cccc) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete the following portions of the definition of "government-financed reclamation contract", at 52 P.S. § 1396.3: in paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and, in paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the

project area or return of any coal refuse material of the project area."

(dddd) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete the definition of "no-cost reclamation contract", at 52 P.S. § 1396.3.

(eeee) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete the following language contained in subsection "e" of 52 P.S. § 1396.4h:

For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mines lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the

coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation.

(ffff) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete, in its entirety, subsection "g" of 52 P.S. § 1396.4h.

4. Section 938.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 938.25 Approval of Pennsylvania abandoned mine reclamation plan amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
November 21, 1997	March 26, 1999	Part F—Government Financed Construction Contracts.

[FR Doc. 99-7282 Filed 3-25-99; 8:45 am]  
BILLING CODE 4310-05-M

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**32 CFR Part 556**

**Private Organizations on Department of the Army Installations**

**AGENCY:** U.S. Army Community and Family Support Center, DOD.

**ACTION:** Final rule.

**SUMMARY:** This document removes the Department of the Army's Private Organizations on Department of the Army Installations regulation codified in 32 CFR, part 556. The part has served its purpose and no longer supports other related rules currently in existence. The Army is in the process, however, of revising its policies and procedures concerning authorization and operation of private organizations operating on Army installations and will announce a future proposed rule for public comment.

**EFFECTIVE DATE:** March 26, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Margaret McMullen, U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22302, phone (703) 681-7434.

**SUPPLEMENTARY INFORMATION:**

Additionally, removal of Part 556 is based on the inconsistency of text with revised DODI 1000.15, Private Organizations on DOD Installations, and DOD 5500.7-R, Joint Ethics Regulations.

**List of Subjects in 32 CFR Part 556**

Federal buildings and facilities.