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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-129-FOR]

Pennsylvania Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. Pennsylvania has submitted this proposed amendment to reflect changes made to regulations in the Pennsylvania program through the Department's Regulatory Basics Initiative (RBI). Under this initiative, regulations were revised because they were considered to be unclear, unnecessary or more stringent than the corresponding Federal regulation. The RBI resulted in the rulemaking in Coal Mining Permitting and Performance Standards, Pennsylvania Bulletin, Vol. 28, No. 19, May 9, 1998. The proposed amendment revises certain portions of 25 Pennsylvania Code Chapter 86, Surface and Underground Mining: General; Chapter 87, Surface Mining of Coal; Chapter 88, Anthracite Coal; Chapter 89, Underground Mining of Coal and Coal Preparation Facilities; and Chapter 90, Coal Refuse Disposal. The amendments are intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received on or before 4:00 p.m. on January 18, 2000. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on January 11, 2000. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 3, 2000.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below. Our practice is to make comments, including names and home

addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack), 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782-4036.

Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, 400 Market Street, P.O. Box 8476, Harrisburg, Pennsylvania 17101. Telephone: (717) 783-2267.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33079). Subsequent actions concerning the regulatory program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

By letter dated November 30, 1999 (Administrative Record No. PA-849.02), the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program because of the department's Regulatory Basics Initiative (RBI). Under the RBI, regulations were revised because they were considered unclear, unnecessary or were more stringent than the corresponding federal regulations.

PADEP proposes to amend certain provisions of 25 Pennsylvania Code, Chapters 86 through 90, as follows:

Chapter 86, Surface and Underground Coal Mining: General

Section 86.2 Scope

PADEP proposes to correct a grammatical error by changing the word "specify" to "specifies" in the opening paragraph.

Section 86.37. Criteria for Permit Approval or Denial

PADEP proposes to modify subsection (4) to assure activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area by adding the word "material" before damage and eliminating the words "within and" before the word "outside".

PADEP proposes to modify subsection (6) regarding the effects of proposed coal mining activities on properties listed on or eligible for listing on the National Register of Historic Places by deleting the phrase "or eligible for inclusion on" from the second sentence and re-ordering the sentences. The first two sentences of subsection (6) now read as: "The proposed activities will not adversely affect any publicly owned parks or places included on the National Register of Historic Places, except as provided for in Subchapter D. The effect of the proposed coal mining activities on properties listed on or eligible for listing on the National Register of Historic Places has been taken into account by the Department".

Section 86.40 Permit Terms

PADEP proposes to modify subsection (b) by adding criteria under which the Department may grant an extension of time for commencement of mining activities by adding the phrase "or if there are conditions beyond the control and without the fault or negligence of the permittee".

Section 86.64 Right of Entry

PADEP proposes to modify this section by adding additional criteria for documenting right of entry by adding the following sentence to subsection (a) "The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains and explain the legal rights claimed by the applicant". Existing subsection (b)(1) and (2) are eliminated and new subsections (b)(1) through (3) are added specifying the documents required. New subsection (c) is added as "This section shall not be construed to provide the Department with the authority to adjudicate property rights disputes". Existing subsection (c) is re-lettered as (d), new subsection (d)(3) is added to specify that the requirements of the subsection are in addition to the requirements required by subsections (a) and (b), and existing subsections (2)(d) and (2)(e) are re-lettered as (3)(e) and (3)(f), respectively, which specify that all information required in the subsection shall be made part of the permit application.

Section 86.70 Proof of Publication

PADEP proposes to modify this subsection to require that an application to the Department shall contain an intent to publish, and a copy of the language to appear in the public notice as well as a copy of the advertisements or the original notarized proof of publication.

Section 86.132 Definitions

Substantially disturb. PADEP proposes to modify this definition by adding the word "significant" before "impact". The relevant portion of the definition now reads "For purposes of coal exploration, including, but not limited to, to have a significant impact upon land, air or water resources * * *

Section 86.133 General Requirements

PADEP proposes to modify subsection (e) to include parameters for metric tons, and to change the word "less than" to "or less" and to change the words "or more" to "more than". The relevant portion of the requirement now reads "if 250 tons (226 metric tons) or less is removed", and "The removal of more than 250 tons (226 metric tons) of coal * * *

Section 86.134 Coal Exploration Performance and Design Standards

PADEP proposes to modify subsection (1) by eliminating existing subsections (2) and (3) that required the person conducting coal exploration to measure

environmental characteristics during the operations and to limit vehicular traffic and adding new subsection (2) that states "Roads used for coal exploration shall comply with the following". Existing subsections (4) and (5) are re-numbered as (3) and (4), existing subsection (6) is eliminated and new subsection (5) is added as follows: "All areas disturbed by coal exploration activities shall be vegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective and permanent vegetative cover". Additionally, existing subsections (7) through (12) are re-numbered as (6) through (11) respectively.

Section 86.174 Standards for Release of Bonds

PADEP proposes to modify subsection (b)(1) to clarify the standards for Stage 2 bond release by requiring that topsoil and revegetation be successfully completed in accordance with the reclamation plan. The phrase "and the standards for the success of revegetation are met" is eliminated. PADEP also proposes to make a grammatical change to Subsection (b)(2) by changing the word "their" to "the" prior to "requirements of the acts pertaining to contribution of suspended solids to stream flow".

*Chapter 87, Surface Mining of Coal**Section 87.1 Definitions*

PADEP proposes to add subsection (x) "unmanaged natural habitat", which is defined as idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

Section 87.77 Protection of Public Parks and Historic Places

PADEP proposes to modify subsection (a) by specifying that the rules pertain to publicly owned parks or historic places that are listed on the National Register of Historic Places.

Section 87.93 Casing and Sealing of Drilled Holes

PADEP proposes to modify subsection (a)(2) by substituting the word "minimize" for the phrase "prevent to the maximum extent possible" and adding a metric measurement of 38.1 meters to subsection (e) pertaining to the radius of the barrier of undisturbed earth around all oil and gas wells.

PADEP proposes to modify subsection (2)(iii) pertaining to when the Department may approve lesser distances by deleting the existing language and adding the following: "The measures included in the permit to minimize damage, destruction or

disruption of services pursuant to § 87.173(b) are implemented.

Section 87.97 Topsoil: Removal

PADEP proposes to modify subsection (c) by including metric measurements of 30.48 centimeters with the 12-inch measurement and to modify subsection (f) by substituting the word "topsoil" for "subsoil."

Section 87.101 Hydrologic Balance: General Requirements

PADEP proposes to modify subsection (a) by substituting the word "minimize" for the phrase "prevent to the maximum extent possible" and by adding a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. PADEP further proposes to add that the Department may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.

Section 87.106 Hydrologic Balance: Sediment Control Measures

PADEP proposes to modify subsection (l) pertaining to prevention of contributions of sediment to streamflow or runoff by eliminating the word "maximum" prior to the words "extent possible".

PADEP also proposes to modify subsection (3) by changing the language of the requirement from "Prevent erosion to the maximum extent possible" to "Minimize erosion to the extent possible."

Section 87.126 Use of Explosives: Public Notice of Blasting Schedule

PADEP proposes to modify subsection (a) by allowing publication of the blasting schedule in a newspaper of general circulation up to 30 days before beginning a blasting program instead of the existing 20 day period.

Section 87.127 Use of Explosives: Surface Blasting Requirements

PADEP proposes to modify subsection (f)(5) by changing the limit for casting-off flyrock from the "line of property owned or leased by the permittee" to the "permit boundary".

Section 87.138 Protection of Fish, Wildlife and Related Environmental Values

PADEP proposes to modify subsection (a) by adding the phrase "to the extent possible" prior to the phrase "using the best technology currently available". PADEP also proposes to modify

subsections (a)(1) through (a)(3) by eliminating the word "prevent" and substituting the words "minimize", "avoid or minimize" and "avoid" respectively, as they pertain to disturbances.

PADEP also proposes to modify subsection (b) by changing the name of the Fish Commission to the Fish and Boat Commission.

Section 87.144 Backfilling and Grading: Final Slopes

PADEP proposes to modify subsection (c) by deleting subsections (1) through (4) enumerating requirements for terraces. PADEP also proposes to modify subsection (f) by eliminating specific grading, preparation of overburden, and placement of topsoil requirements pertaining to placement in a direction other than parallel when parallel placement creates hazards to equipment operators.

Section 87.146 Regarding or Stabilizing Rills and Gullies

PADEP proposes to eliminate the existing subsection and substitute the following new subsections:

(a) Exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which do one of the following shall be filled, regraded and otherwise stabilized:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover.

(2) Cause or contribute to a violation of water quality standards for receiving streams.

(c) For the areas listed in subsection (b), the topsoil shall be replaced and the areas shall be reseeded or replanted.

Section 87.159 Postmining Land Use

PADEP proposes to modify subsection (b) by eliminating subsections (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining.

PADEP also proposes to add new subsection (3) as follows: "The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria": Criteria currently identified in subsections (3), (4), and (5) are re-lettered as (i), (ii) and (iii) respectively, under new subsection (3).

PADEP also proposes to eliminate subsection (6) pertaining to certification of plans for postmining land use by a

registered professional engineer. Existing subsections (7), (8) and (9) are re-numbered as (4), (5) and (6), respectively.

Section 87.160 Haul Roads and Access Roads

PADEP proposes to modify subsection (a) by eliminating the phrase "prevent, to the maximum extent possible", and substituting the words "control or prevent" prior to "erosion and contributions of sediment to streams or runoff * * *".

Section 87.166 Haul Roads and Access Roads: Restoration

PADEP proposes to modify this subsection by substituting the phrase "as soon as practicable" for the word "immediately".

PADEP also proposes to modify subsection (4) by eliminating the requirement that roadbeds be plowed. The subsection now reads "Roadbeds shall be ripped or scarified".

Section 87.173 Support Facilities and Utility Installations

PADEP proposes to modify subsection (a) by eliminating criteria from the opening paragraph and deleting subsections (1) and (2). The criteria to locate, maintain and use buildings is now included in new subsections (1), (2), (2)(i) and (2)(ii) as follows:

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available:

(i) Minimizes damage to fish, wildlife and related environmental values.

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. These contributions may not be in excess of limitations of State or Federal law.

Section 87.174 Steep Slope Operations

PADEP proposes to eliminate subsection (g) pertaining to Departmental approval of unprotected drainage channels on backfilled areas.

Section 87.176 Auger Mining

PADEP proposes to delete subsection (d) pertaining to augering to the rise. Existing subsection (e) is re-lettered as (d) and further modified to outline situations where the Department may allow auger mining in subsections (d)(1) through (d)(4).

Section 87.209 Criteria and Schedule for Release of Bonds on Pollution Abatement Areas

PADEP proposes to modify subsection (a) by raising the amount of bond to

release from 50% to 60%. PADEP also proposes to modify subsection (a)(4) to specify that the operator has not caused degradation of baseline pollution at any time during a period of 6 months prior to request for bond release. PADEP further proposes to modify subsection (b) by deleting the phrase that allows release of additional bond up to 35% of the amount of the bond for the authorized pollution abatement area and substituting the phrase that additional funds can be released, but that the Department will retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party.

PADEP also proposes to modify subsection (b)(3)(ii)(I) by deleting the phrase "from the date of the initial bond release under subsection (a)" and substituting the phrase "prior to the date of application for bond release and until the bond release is approved under subsection (b) * * *" as it pertains to the 12 month period of ground water monitoring that does not show degradation of baseline pollution load.

PADEP proposes to modify subsection (c)(4) pertaining to the release of the remaining portion of the bond by deleting the phrase "which shall be measured from the date of release of bond under subsection (b)."

Chapter 88, Anthracite Coal

Section 88.1 Definitions

PADEP proposes to add subsection (x) "unmanaged natural habitat", which is defined as idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

Section 88.56 Protection of Public Parks and Historic Places

PADEP proposes to modify subsection (a) by specifying that the rules pertain to publicly owned parks or historic places that are listed on the National Register of Historic Places.

Section 88.83 Sealing of Drilled Holes: General Requirements

PADEP proposes to modify subsection (a)(2) by substituting the word "minimize" for the phrase "prevent to the maximum extent possible" and adding a metric measurement of 38.1 meters to subsection (e) pertaining to the radius of the barrier of undisturbed earth around oil and gas wells.

PADEP proposes to modify subsection (2)(iii) pertaining to when the Department may approve lesser distances by deleting the existing language and adding the following: "The measures included in the permit to minimize damage, destruction or

disruption of services are implemented.”

Section 88.91 Hydrologic Balance: General Requirements

PADEP proposes to modify subsection (a) by substituting the word “minimize” for the phrase “prevent to the maximum extent possible” and by adding a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. PADEP further proposes to add that the Department may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.

Section 88.96 Hydrologic Balance: Sediment Control Measures

PADEP proposes to modify subsection (l) pertaining to prevention of contributions of sediment to streamflow or runoff by eliminating the word “maximum” prior to the words “extent possible”.

PADEP also proposes to modify subsection (3) by changing the language of the requirement from “Prevent erosion to the maximum extent possible” to “Minimize erosion to the extent possible.”

Section 88.118 Backfilling and Grading: Final Slopes

PADEP proposes to modify subsection (c) by deleting subsections (1) through (4) enumerating requirements for terraces. PADEP also proposes to modify subsection (f) by eliminating specific grading, preparation of overburden, and placement of topsoil requirements pertaining to placement in a direction other than parallel when parallel placement creates hazards to equipment operators.

Section 88.133 Postmining Land Use

PADEP proposes to modify subsection (a) by deleting the reference to Subchapter E (relating to coal exploration) and adding the reference to Subchapter F (relating to bonding and insurance requirements).

PADEP also proposes to modify subsection (b) by eliminating subsections (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining.

PADEP also proposes to add new subsection (3) as follows: “The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria”:

Criteria currently identified in subsections (3) and (4) are re-lettered as (i), (ii) respectively under new subsection (3).

PADEP also proposes to eliminate subsection (5) pertaining to certification of plans for postmining land use by a registered professional engineer. Existing subsections (6), (7) and (8) are re-numbered as (4), (5) and (6), respectively.

Section 88.138 Haul Roads and Access Roads: General

PADEP proposes to modify subsection (a) by eliminating the phrase “prevent, to the maximum extent possible”, and substituting the words “control or prevent” prior to “erosion and contributions of sediment to streams or runoff * * *”.

Section 88.144 Haul Roads and Access Roads: Restoration

PADEP proposes to modify this subsection by substituting the phrase “as soon as practicable” for the word “immediately”.

Section 88.191 Hydrologic Balance: Sediment Control Measures

PADEP proposes to modify subsection (l) pertaining to prevention of contributions of sediment to streamflow or runoff by eliminating the word “maximum” prior to the words “extent possible”.

PADEP also proposes to modify subsection (3) by changing the requirement from “Prevent erosion to the maximum extent possible” to “Minimize erosion to the extent possible.”

Section 88.221 Postmining Land Use

PADEP proposes to modify subsection (b) by eliminating subsections (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining. PADEP also proposes to add new subsection (3) as follows: “The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria”: Criteria currently identified in subsections (3) and (4) are re-lettered as (i) and (ii) respectively under new subsection (3).

PADEP also proposes to eliminate subsection (5) pertaining to certification of plans for postmining land use by a registered professional engineer. Existing subsections (6), (7) and (8) are renumbered as (4), (5) and (6), respectively.

Section 88.231 Haul Roads and Access Roads: General

PADEP proposes to modify subsection (a) by eliminating the phrase “prevent, to the maximum extent possible”, and substituting the words “control or prevent” prior to “erosion and contributions of sediment to streams or runoff . . .”.

Section 88.237 Haul Roads and Access Roads: Restoration

PADEP proposes to modify this subsection by substituting the phrase “as soon as practicable” for the word “immediately”.

Section 88.283 Sealing of Drilled Holes: General Requirements

PADEP proposes to modify subsection (e) by adding a metric measurement of 38.1 meters pertaining to the radius of the barrier of undisturbed earth around all oil and gas wells.

PADEP also proposes to modify subsection (2)(iii) pertaining to approval of lesser distances by deleting the existing language and adding the following: “The measures included in the permit to minimize damage, destruction or disruption of services are implemented.”

Section 88.291 Hydrologic Balance: General Requirements

PADEP proposes to modify subsection (a) by substituting the word “minimize” for the phrase “prevent to the maximum extent possible” and by adding a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. PADEP further proposes to add that the Department may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.

Section 88.296 Hydrologic Balance: Sediment Control Measures

PADEP proposes to modify subsection (l) pertaining to prevention of contributions of sediment to streamflow or runoff by eliminating the word “maximum” prior to the words “extent possible”.

Section 88.334 Postdisposal Land Use

PADEP proposes to modify subsection (a) by changing the reference from “this section (bonds)” to “Chapter 86, Subchapter F, (relating to bonding and insurance requirements)”.

PADEP also proposes to modify subsection (b) by eliminating subsections (3) and (4) pertaining to

land that has received improper management or was changed within 5 years of the beginning of mining.

PADEP also proposes to modify subsection (c)(1) by deleting the reference to "surface mining" and substituting "coal refuse disposal".

PADEP also proposes to add new subsection (3) as follows: "The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria: Criteria currently identified in subsections (3) and (4) are re-lettered as (i) and (ii) respectively, under new subsection (3), and (i) is further changed by deleting the reference to "surface mining" and substituting "coal refuse disposal".

PADEP also proposes to eliminate subsection (5) pertaining to certification of plans for postdisposal land use by a registered professional engineer. Existing subsections (6), (7), and (8) are re-numbered as (4), (5) and (6), respectively.

Section 88.335 Haul Roads and Access Roads: General

PADEP proposes to modify subsection (a) by eliminating the phrase "prevent, to the maximum extent possible", and substituting the words "control or prevent" prior to "erosion and contributions of sediment to streams or runoff . . .".

Section 88.341 Haul Roads and Access Roads: Restoration

PADEP proposes to modify this subsection by substituting the phrase "as soon as practicable" for the word "immediately".

Section 88.492 Minimum Requirements for Reclamation and Operation Plan

PADEP proposes to modify subsection (f)(1) by specifying that the rules pertain to publicly owned parks or historic places that are listed on the National Register of Historic Places.

Section 88.509 Criteria and Schedule For Release of Bonds on Pollution Abatement Areas.

PADEP proposes to modify subsection (a) by raising the amount of bond to release from 50% to 60%. PADEP also proposes to modify subsection (a)(4) to specify that the operator has not caused degradation of baseline pollution at any time during a period of 6 months prior to request for bond release. PADEP further proposes to modify subsection (b) by deleting the phrase that allows release of additional bond up to 35% of the amount of the bond for the

authorized pollution abatement area and substituting the phrase that additional funds can be released, but that the Department will retain an amount sufficient to cover the cost to the Department of reestablishing vegetation if completed by a third party.

PADEP also proposes to modify subsection (b)(3)(ii)(I) by deleting the phrase "from the date of the initial bond release under subsection (a)" and substituting the phrase "prior to the date of application for bond release and until the bond release is approved under subsection (b)" as it pertains to the 12 month period of ground water monitoring that does not show degradation of baseline pollution load.

PADEP proposes to modify subsection (c)(4) pertaining to the release of the remaining portion of the bond by deleting the phrase "which shall be measured from the date of release of bond under subsection (b)."

Chapter 89, Underground Mining of Coal and Coal Preparation Facilities

Section 89.38 Archaeological and Historical Resources and Public Parks

PADEP proposes to re-title this section as Archaeological and historical resources, public parks and publicly owned parks.

PADEP proposes to modify subsection (b) by specifying that the rules pertain to publicly owned parks or historic places that are listed on the National Register of Historic Places.

Section 89.65 Protection of Fish, Wildlife and Related Environmental Values

PADEP proposes to modify subsection (a) by adding the phrase "to the extent possible" prior to the phrase "using the best technology currently available" and by changing the word "prevent" to "minimize" prior to the word "disturbances."

PADEP also proposes to modify subsections (d)(1) and (d)(2) by eliminating the word "prevent" and substituting the words "avoid or minimize" and "avoid" respectively, as they pertain to disturbances. Subsection (d)(2) is further modified by requiring an operator to avoid disturbances to enhance or restore habitats of unusually high value for fish and wildlife.

Section 89.67 Support Facilities

PADEP proposes to modify subsection (a) by eliminating criteria from the opening paragraph and deleting subsections (1) and (2). The criteria to locate, maintain and use buildings is now included in new subsections (1), (2), (2)(i) and (2)(ii) as follows:

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available:

(i) Minimizes damage to fish, wildlife and related environmental values.

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. These contributions may not be in excess of limitations of State or Federal law.

Section 89.82 Protection of Fish, Wildlife and Related Environmental Values

PADEP proposes to modify subsections (a) and (c) by adding the phrase "to the extent possible" prior to the phrase "using the best technology currently available" and by deleting the phrase "of the reclamation activities" in subsection (a).

PADEP also proposes to modify subsections (b) and (e) by changing the name of the Fish Commission to the Fish and Boat Commission.

Section 89.87 Regrading or Stabilizing Rills and Gullies

PADEP proposes to eliminate the existing subsections and substitute the following new subsections:

(a) Exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which do one of the following shall be filled, regraded and otherwise stabilized:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover.

(2) Cause or contribute to a violation of water quality standards for receiving streams.

(c) For the areas listed in subsection (b), the topsoil shall be replaced and the areas shall be reseeded or replanted.

Section 89.88 Postmining Land Use

PADEP proposes to modify subsection (b) by eliminating subsections (2) and (3) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining.

PADEP also proposes to add new subsection (2) as follows: The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria: Criteria currently identified in subsection (2) is now included in subsection (i).

PADEP also proposes to eliminate subsection (3) pertaining to certification of plans for postmining land use by a registered professional engineer. Existing subsections (4), (5), (6) and (7) are renumbered as (3), (4), (5) and (6), respectively.

Section 89.90 Restoration of Roads

PADEP proposes to modify subsection (a) by substituting the phrase "as soon as practicable" for the word "immediately".

PADEP also proposes to modify subsection (4) by eliminating the requirement that roadbeds be plowed. The subsection now reads "Roadbeds shall be ripped or scarified".

Chapter 90, Coal Refuse Disposal

Section 90.1 Definitions

PADEP proposes to add subsection (x) "unmanaged natural habitat", which is defined as idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished.

Section 90.40 Protection of Public Parks and Historic Places

PADEP proposes to modify subsection (a) by specifying that the rules pertain to publicly owned parks or historic places that are listed on the National Register of Historic Places.

PADEP also proposes to modify subsections (a)(1) and (a)(2) by deleting the word "to" before "prevent" and "minimize" respectively.

Section 90.93 Casing and Sealing of Drilled Holes and Underground Workings

PADEP proposes to modify subsection (d) by deleting the reference to the requirements of the Gas Operations, Well-Drilling, Petroleum and Coal Mining Act (52 P.S. § 2101-2602) and adding a reference to the Oil and Gas Act (58 P.S. §§ 601.101-601.605).

PADEP also proposes to add a metric measurement of 38.1 meters to subsection (e) pertaining to the radius of the barrier of undisturbed earth around all oil and gas wells.

PADEP further proposes to modify subsection (2)(iii) pertaining to when the Department may approve lesser distances by deleting the existing language and adding the following: "The measures included in the permit to minimize damage, destruction or disruption of services pursuant to § 90.147(b) are implemented.

Section 90.97 Topsoil: Removal

PADEP proposes to modify subsection (c) by including metric measurements of 30.48 centimeters with the 12-inch

measurement and to modify subsection (f) by substituting the word "topsoil" for "subsoil."

Section 90.101 Hydrologic Balance: General Requirements

PADEP proposes to modify subsection (a) by substituting the words "minimize disturbances" for the phrase "prevent to the maximum extent possible, changes" and by adding a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. PADEP further proposes to add that the Department may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.

Section 90.106 Hydrologic Balance: Erosion and Sedimentation Control

PADEP proposes to modify subsection (a)(1) pertaining to prevention of contributions of sediment to streamflow or runoff by eliminating the word "maximum" prior to the words "extent possible".

PADEP also proposes to modify subsection (a)(3) by changing the requirement from "Prevent erosion to the maximum extent possible" to "Minimize erosion to the extent possible."

Section 90.134 Haul Roads and Access Roads: General

PADEP proposes to modify subsection (a) by eliminating the phrase "minimize erosion and to prevent", and substituting the words "control or prevent." prior to "contributions of sediment to streams or runoff . . .".

Section 90.140 Haul Roads and Access Roads: Restoration

PADEP proposes to modify this subsection by substituting the phrase "as soon as practicable" for the word "immediately".

PADEP also proposes to modify subsection (4) by eliminating the requirement that roadbeds be plowed. The subsection now reads "Roadbeds shall be ripped or scarified".

Section 90.147 Support Facilities and Utility Installations

PADEP proposes to modify subsection (a) by eliminating criteria from the opening paragraph and deleting subsections (1) and (2). The criteria to locate, maintain and use buildings is now included in new subsections (1), (2), (2)(i) and (2)(ii) as follows:

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available:

(i) Minimizes damage to fish, wildlife and related environmental values.

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. These contributions may not be in excess of limitations of State or Federal law.

Section 90.150 Protection of Fish, Wildlife and Related Environmental Values

PADEP proposes to modify subsection (a) by adding the phrase "to the extent possible" prior to the phrase "using the best technology currently available".

PADEP also proposes to modify subsections (a)(1) through (a)(3) by eliminating the word "prevent" at the beginning of each and substituting the words "minimize", "Locate and operate haul and access roads to avoid or minimize" and "avoid" respectively, as they pertain to disturbances in each subsection. Subsection (a)(3) is further modified by requiring an operator to avoid disturbances to enhance or restore habitats of unusually high value for fish and wildlife.

PADEP proposes to modify subsections (b) and (d) by changing the name of the Fish Commission to the Fish and Boat Commission.

Section 90.166 Postdisposal Land Use

PADEP proposes to modify subsection (a) by changing the reference from "Subchapter E (relating to coal exploration)" to "Subchapter F (relating to bonding and insurance requirements)".

PADEP also proposes to modify subsection (b) by eliminating subsections (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining.

PADEP also proposes to add new subsection (3) as follows: "The proposed postmining land use is reasonably likely to be achieved which may be demonstrated by one or more of the following or other similar criteria": Criteria currently identified in subsections (3), (4) and (5) are re-lettered as (i), (ii) and (iii) respectively under new subsection (3).

PADEP also proposes to eliminate subsection (6) pertaining to certification of plans for postdisposal land use by a registered professional engineer. Existing subsections (7), (8), and (9) are re-numbered as (4), (5) and (6), respectively.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on January 3, 2000. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If a public hearing is held, it will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. 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 regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. 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)(10), 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 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.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD07-99-087]

RIN 2115-AA97

OPSAIL 2000, Port of Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Advanced notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard requests public comment on the temporary establishment of several exclusion areas for OPSAIL 2000 in the Port of Miami, Florida, from June 6 through June 10, 2000. The Coast Guard anticipates a rulemaking to establish temporary Limited Access Areas and/or Special Local Regulations to control vessel traffic within the Port of Miami on the last two days of the event, June 9 and 10, 2000. These temporary regulations will be necessary to ensure the safety of persons and property in the vicinity of a fireworks display scheduled for June 9, 2000, in the vicinity of the west turning basin, and in the movement of numerous large sail vessels (Tall Ships) during the parade of sail out of the Port of Miami scheduled for June 10, 2000.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments may be mailed to the Port Management and Response Department, Coast Guard Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, Florida 33139, or delivered to the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Port Management and Response Department of Marine Safety Office Miami maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in