

cancel or reduce coverage of that employee, spouse, or dependent under the accident or health plan. In addition, if an employee, spouse, or dependent who has been entitled to such coverage under Medicare or Medicaid loses eligibility for such coverage, the cafeteria plan may permit the employee to make a prospective election to commence or increase coverage of that employee, spouse, or dependent under the accident or health plan.

(f) *Significant cost or coverage changes.* [Reserved]

(g) *Special requirements relating to the Family and Medical Leave Act.* An employee taking leave under the Family and Medical Leave Act (FMLA) (Public Law 102-530 (88 Stat. 829)) may revoke an existing election of group health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.

(h) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with section 401(k) and (m) and the regulations thereunder.

(i) *Definitions.* Unless otherwise provided, the definitions in paragraphs (i)(1) through (8) of this section apply for purposes of this section.

(1) *Accident or health coverage.*

Accident or health coverage means coverage under an accident or health plan as defined in regulations under section 105.

(2) *Benefit package option.* A benefit package option means a qualified benefit under section 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a dependent of both parents.

(4) *Disability income coverage.* Disability income coverage means coverage under an accident or health plan that provides benefits due to personal injury or sickness, but does not reimburse expenses incurred for medical care (as defined in section 213(d)) of the employee or the employee's spouse and dependents, and

does not provide for payments described in section 105(c).

(5) *Family member plan.* A family member plan means a cafeteria plan or qualified benefit plan sponsored by the employer of the employee's spouse or the employee's dependent.

(6) *FSA, health FSA.* An FSA means a qualified benefits plan that is a flexible spending arrangement as defined in section 106(c)(2). A health FSA means a health or accident plan that is an FSA.

(7) *Placement for adoption.* Placement for adoption means placement for adoption as defined in regulations under section 9801.

(8) *Qualified benefits plan.* A qualified benefits plan means an employee benefit plan governing the provision of one or more benefits that are qualified benefits under section 125(f).

(j) *Effective date.* This section is applicable for cafeteria plan years beginning on or after January 1, 2001.

**Par. 3.** § 1.125-4T is amended by revising paragraph (l) to read as follows:

**§ 1.125-4T Permitted election changes (temporary).**

\* \* \* \* \*

(l) *Effective date.* This section is applicable for plan years beginning after December 31, 1998, and on or before November 6, 2000.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: February 23, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 00-5817 Filed 3-22-00; 8:45 am]

**BILLING CODE 4830-01-U**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

#### [PA-127-FOR]

#### Pennsylvania Regulatory Program

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

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

**SUMMARY:** OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA). The amendment revises the Pennsylvania program to incorporate changes made by Pennsylvania regarding administration of the Small Operators Assistance Program (SOAP).

**EFFECTIVE DATE:** March 23, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program.
- II. Submission of the 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 program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of 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. Submission of the Amendment

By letter dated November 8, 1999, (Administrative Record Number PA 846.02), Pennsylvania submitted an amendment to the Pennsylvania program. The amendment resulted from regulations the Pennsylvania Department of Environmental Protection (PADEP) published in the Pennsylvania Bulletin (28 Pa. B. 15, January 3, 1998). The regulations were published to revise Pennsylvania's existing SOAP regulations to be consistent with the federal SOAP revisions and because of the Department's Regulatory Basics Initiative (RBI). Under the RBI, regulations are revised because they were considered unclear, unnecessary or were more stringent than the corresponding federal regulations. Pennsylvania also published the regulations to address an amendment required by OSM [see 30 CFR 938.16(ooo)].

The proposed amendment was published in the **Federal Register** (64



FR 66598, November 29, 1999), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 29, 1999. No public hearings were requested or held.

### III. Director's Findings

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

#### A. 25 PA Code 86.80. Definitions

The definition of the phrase, "qualified consultant and qualified laboratory" was moved to this newly created section from 25 PA Code 86.91. There was only a slight wording change when it was moved. The use of the term "qualified consultant" was discussed and approved in a previous Pennsylvania amendment regarding SOAP (60 FR 16789 and 16791, April 3, 1995). In approving that amendment, the Director found that use of the term "qualified consultant" was consistent with the intent of the federal regulations and did not render the Pennsylvania program less effective than the counterpart regulations at 30 CFR part 795. With regard to the current amendment, the Director finds that moving of the definition and the slight wording change to the definition of "qualified consultant and qualified laboratory" is no less effective than the federal definition found at 30 CFR 795.3.

#### B. 25 PA Code 86.81, Program Services

The first change proposed to 25 PA Code 86.81 is the deletion of the phrase "for qualified small operators who request assistance" in subsection (a) when describing the Department's duties. A new subsection (1) which requires the Department to, "Review requests for assistance" is proposed to be added. While there is no direct federal counterpart to this regulation, the Director finds the amendment to be consistent with 30 CFR 795.9 regarding administration of the SOAP program and data requirements and therefore approves the change.

PADEP further changed this section by moving the referenced regulations of subsection (a)(1)(iii) to newly created subsections (a)(2)(iii)(A), (B), and (C) and by stating that the Department will select and pay a qualified consultant to provide a description of the existing resources within and adjacent to the proposed permit area in accordance

with one of those subsections. In moving the referenced regulations, PADEP dropped references to 25 PA Code §§ 87.48, 87.49, 87.52, 87.53, 88.28, 88.29, 88.30, 88.32, 88.33, 89.37, 89.38, 89.71, 89.72, 89.73, 89.102, 89.121, 89.122, 89.141, and 89.142(a). The remaining references are: (A) Sections 87.41–87.47, 87.50 and 87.54, (B) 88.21–88.27 and 88.31, and (C) 89.33–89.36, 89.38 and 89.74. The cross references listed in (C) that in 1995 (60 FR 16788) were approved previously remain approved except as noted later in the discussion regarding § 89.34.

Similarly, the Department changed subsection (a)(1)(iv) by moving referenced regulations to newly created subsections (a)(2)(iv)(A), (B), and (C) and by stating that the Department will select and pay a qualified consultant to provide a detailed description, to include maps, plans, and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with one of those subsections. In moving the referenced regulations, PADEP dropped references to 25 PA Code §§ 87.68, 87.70–87.76 (inclusive), and 87.78–87.83 (inclusive), 88.41–88.44 (inclusive), 88.46, 88.48, 88.50–88.55 (inclusive), 88.57–88.61 (inclusive). The remaining references are: (A) Sections 87.69, 87.77 and 87.84 and (B) Sections 88.49, 88.56 and 88.62.

For Chapter 89 references to subsection (a)(2)(iv)(C), PADEP added §§ 89.33, 89.34, and 89.35 while deleting references to §§ 89.31, 89.32, 89.37, 89.71–89.73 (inclusive), 89.102, 89.122(b), 89.141, and 89.142(a). Two of the added Chapter 89 references (§§ 89.33 and 89.35) deal with geology and prediction of the hydrologic consequences for underground mines and coal preparation facilities. The information required by these sections will be used to determine the probable hydrologic consequences and the geology information as provided for in 30 CFR 795.9(b)(1) and (2). Therefore, the Director finds the addition of these references makes this portion of the amendment to be no less effective than the federal rule and approves the change.

The third Chapter 89 reference, § 89.34, deals with hydrology for underground mines and coal preparation facilities. Subsections (a)(1)(i) and (ii), (a)(2)(i), and (b) deal with collection of groundwater and surface water information for the proposed permit and adjacent areas. The information required by these subsections will be used to determine the probable hydrologic consequences

information as provided for in 30 CFR 795.9(b)(1). However, subsections (a)(1)(iii) and (a)(2)(ii) deal respectively with groundwater and surface water monitoring plans. The information required by these subsections is not of the nature that would be funded under federal SOAP guidelines. In 1995, OSM had inadvertently approved in 86.81(a)(1)(iii), the cross reference to § 89.34(a)(1)(iii) and (a)(2)(ii). Now, however, the Director is approving incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The Director is not approving the incorporation of this references into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

PADEP changed the references to the regulations at 86.81(a)(2)(iii) and 86.81(a)(2)(iv) in response to OSM's comments to Pennsylvania's previous SOAP amendment (60 FR 16788). In reviewing that amendment, OSM required PADEP to correct regulatory citations that are beyond the scope of services authorized by 30 CFR 795. While PADEP deleted most of the regulatory citations OSM felt were beyond the scope of services authorized by 30 CFR 795, there are still several that remain including references in 25 PA Code 86.81(a)(2)(iii)(A) and (B) to §§ 87.41, 87.42(1), 88.21, and 88.22(1). Sections 25 PA Code 87.41 and 88.21 correspond to 30 CFR 779.11, (description in permit application of existing, premining environmental resources that may be affected or impacted) and 25 PA Code 87.42(1) and 88.22(1) correspond to 30 CFR 779.12(a) (description and identification of lands, etc.). Neither the requirements noted in 30 CFR 779.11 nor 779.12(a) are referenced in federal regulations as being authorized for payment under the SOAP program. The Director is approving subsections 86.81(a)(2)(iii)(A) and (B) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(a)(2)(iii)(A) and (B) to the extent that the proposed



subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

In the 1995 SOAP amendment, OSM also noted that the permitting requirements at 25 PA Code 87.77, 88.56 and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks (60 FR 16790). The references to public parks remain in subsections 86.81(a)(2)(iv)(A), (B) and (C). The Director is approving the reference of §§ 87.77, 88.56 and 89.38 in subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The Director is not approving the incorporation of these references into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

Finally, PADEP added subsection (b) which provides that the applicant is responsible for costs exceeding the amount of funds allocated for the services to the applicant. This requirement was moved from 25 PA Code 86.94(c). While there is no direct federal counterpart to subsection (b), the Director finds this proposal is consistent with the federal requirements at 30 CFR 795.11(b) regarding allocation of funds and approves this change.

#### *C. 25 PA Code 86.82, Responsibilities*

This subsection removes language that states the Department will review requests for assistance and determine qualified operators. This change does not significantly impact the Department's procedures and does not diminish the duties of the program administrator as required in 30 CFR §§ 795.8 and 795.9 since the authority by the Department to approve or deny an application for assistance is still provided for in 25 PA Code 86.85. Accordingly, the Director finds that the deletion does not render the Pennsylvania program less effective than the federal program and therefore approves this change.

#### *D. 25 PA Code 86.83, Eligibility for Assistance*

The previous language of this section read that an applicant is eligible for

assistance if the probable total and attributed production from the applicant's operations during the 12-month period immediately following the date on which the applicant is issued the mining activities permit will not exceed 300,000 tons. Subsection 25 PA Code 86.83(a)(2) now reads, "establishes that the probable total attributed annual production from all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons." PADEP included the phrase "all locations" in this subsection to make clear the extent of operations to be included in the tonnage requirements.

A second change was made to this subsection to address a program amendment required by OSM in the 1995 SOAP approval (60 FR 16790). The required regulatory program amendment at 30 CFR 938.16(ooo) required Pennsylvania to amend 25 PA Code 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year. The current proposed amendment removed the phrase, "the applicant's operations during the 12-month period immediately following the date." This removal makes it clear that the 300,000 ton limit as required by the federal regulations now applies in Pennsylvania for all years following permit issuance. The Director finds that the changes are no less effective than the federal requirements of 30 CFR 795.6(a)(2) and can be approved. The required regulatory program amendment at 30 CFR 938.16 (ooo) is removed and reserved.

The final change to 25 PA Code 86.83 is the addition of subsection (c) which states, "For the purpose of this subchapter, measurement of coal production will be based on the production reported to the Office of Surface Mining Reclamation and Enforcement for the purpose of the reclamation fee payment." This section was formerly located in 25 PA Code 86.95 which was previously approved by OSM. There were no substantive changes in the language. Therefore, the Director finds that this section is no less effective than the federal regulations and approves the change.

#### *E. 25 PA Code 86.84, Applications for Assistance*

Pennsylvania proposed to delete subsection (a) which provides, "Persons wishing to receive assistance shall file a Small Operator Assistance Program application with the Department at any

time after initiation of the program." Former subsection (b) is now designated as subsection (a).

Subsection (b)(2)(iii) which required applicants for SOAP benefits to submit a surface mining operator's license as part of the application was also deleted. The requirement to submit information regarding a mine operator's license was added as subsection (a)(7). This subsection requires the mine operator's license number to be submitted as part of the application.

The final change to this subsection was made to former subsection (c) which is now designated as subsection (b). Previously, this subsection required two copies of the application for assistance to be submitted, one of which was to be attested by a notary public or district justice. The subsection now reads, "The application shall be attested by a notary public or district justice."

There are no specific federal counterparts to the deleted language. The deletions do not render the Pennsylvania program less effective than the federal requirements and therefore are approved.

#### *F. 25 PA Code 86.85, Application approval and notice*

This section was amended by adding subsection (a)(3) which requires PADEP to provide the applicant a copy of the contract or other appropriate work order for the qualified consultant's services and the consultants' report within 15 Days of the Department's final approval. Subsection (c) was added which requires the Department to inform the applicant in writing of a decision to deny the application with 45 days of receipt of an application for assistance. The regulations require the Department to state the reason for the denial.

The federal rules at 30 CFR 795.8 require written notification to the applicant when the program administrator finds the applicant either eligible or ineligible for assistance. They do not specify how many days before a decision must be made on the application for assistance. The Director finds 45 days is a reasonable time period and finds that these subsections are no less effective than the federal regulations at 30 CFR 795.8 (a) and (b) and can be approved.

Subsection (b) was modified to make it clear that granting of assistance under the SOAP program does not imply that the Department will approve a subsequent permit action. While there is no federal counterpart to this requirement, the Director finds that this change is not inconsistent with SMCRA and the federal regulations.



*G. 25 PA Code 86.86, Notice*

This provision is being deleted in its entirety. The provisions requiring the Department to notify the applicant of decisions regarding the application are now found in 25 PA Code 86.85(a) and (c).

The Director finds that this proposed deletion does not render the Pennsylvania program less effective than the federal program and approves the deletion.

*H. 25 PA Code 86.87, Determination of data requirements*

Subsection (a) was rewritten by moving a phrase to clarify the section. No language was deleted or added. This section provides that the Department will determine the data collection requirements to meet the objectives of the program. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.

While there is no direct counterpart in the federal regulations, the Director finds the provision is consistent with the SOAP provision at 30 CFR 795.9(c) which allow data collection and analysis to proceed concurrently with the development of mining and reclamation plans and approves the change.

*I. 25 PA Code 86.91, Definitions and Responsibilities*

This provision is being deleted in its entirety. This section contained the definitions for the terms "qualified consultant" and "qualified laboratory." These definitions are found in the newly created section 25 PA Code 86.80.

Subsection (b) contained the procedures people who desired to be included in the list of qualified consultants or qualified laboratories must follow. These requirements are now found at newly created 25 PA Code 86.92(c).

Finally, subsection (c) which required the Department to designate and maintain a list of qualified consultant and qualified laboratories is eliminated. There is no federal requirement that a list of qualified consultants or laboratories be maintained by Pennsylvania. Pursuant to 25 PA Code 86.92, Pennsylvania still determines which laboratories or consultants can

provide services under the SOAP program.

The Director finds that the moving of subsections (a) and (b) and the deletion of subsection (c) does not render the Pennsylvania program less effective than the federal regulations and approves the changes.

*J. 25 PA Code 86.92, Basic Qualifications*

As stated in the discussion regarding 25 PA Code 86.91 above, subsection (c) was added to define the procedures people must follow to be included in PADEP's list of qualified consultants or qualified laboratories.

This requirement was formerly found at 25 PA Code 86.91(b) which was previously approved by OSM. There were no substantive changes in the language of the requirement. Therefore, the Director finds that this section is no less effective than the federal regulations and approves the change.

*K. 25 PA Code 86.94, Applicant Liability*

Subsection (a) describes the circumstances under which an operator will be liable for reimbursing the cost of services performed. One of those circumstances as found in Subsection (a)(3) was changed from failing to mine within three years after obtaining a permit to failure to commence mining within three years after obtaining a permit.

The federal regulation at 30 CFR 795.12 does not specify what stage of mining an operator must be in before he or she is liable for reimbursement to the SOAP program. Pursuant to 30 CFR 773.19(e) and 25 PA Code 86.40(b), a permit is terminated for failing to start mining within three years of permit issuance. Accordingly, it is a reasonable interpretation that the SOAP program should be reimbursed for any funds distributed to that terminated permit. Thus, the Director finds that this subsection is consistent with the federal regulations at 30 CFR 795.12 and can be approved.

Subsection (c) was deleted and moved to 25 PA Code 86.81(b). This subsection provided that the applicant was responsible for costs exceeding the amount of funds allocated for the services to the applicant. The Director finds that moving this subsection does not render the Pennsylvania program less effective than the federal regulations and therefore approves the change.

*L. 86.95, Measurement*

This section was deleted in its entirety. The requirement to use coal production as reported to the Office of

Surface Mining Reclamation and Enforcement for fee payment purposes also for eligibility for participating in SOAP was moved to 86.83(c). The Director finds that deletion of this subsection does not render the Pennsylvania program less effective than the federal requirements and is approved.

**IV. Summary and Disposition of Comments***Federal Agency Comments*

Pursuant to 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various federal agencies with an actual or potential interest in the Pennsylvania program.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) commented that the word "either" after the phrase "in accordance with" found at 86.81(a)(2)(iii) should be deleted. The Director agrees that this typographical error should be deleted but its inclusion does not render the program less effective nor does it cause confusion. MSHA also commented that the agency reference at 86.84(a)(3)(ii) to "Mining Enforcement and Safety Administration" should be replaced with the "Mine Safety and Health Administration." The Director agrees that this is an incorrect reference. However, subsection 86.84(a)(3)(ii) is outside the scope of the amendment since it was not amended by the proposed submission. Pennsylvania should correct this reference in future amendments.

*Public Comments*

A public comment period and opportunity to request a public hearing was announced in the November 29, 1999, **Federal Register** (64 FR 66598). The comment period closed on December 29, 1999. No one requested an opportunity to testify at a public hearing, so no hearing was held.

The only written comments received were from the Pennsylvania Historical and Museum Commission. The Commission stated that it will continue to assist operators qualifying under the SOAP program to identify impacts to cultural resources within the proposed project areas.

The proposed amendment does not modify this relationship and therefore the Commission had no substantive comments about the amendment.

*Environmental Protection Agency*

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.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On November 16, 1999, OSM solicited EPA's concurrence and comments on the proposed amendment (Administrative Record No. PA-864.03). EPA responded on November 29, 1999, (Administrative Record No. PA 846.05) by stating it had no specific comments.

## V. Director's Decision

Based on the findings above the Director is approving, except as noted below, Pennsylvania's SOAP amendment as submitted by Pennsylvania on November 8, 1999.

As noted in section III. B. above, the Director is approving incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) concerning fundable program services to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The Director is not approving the incorporation of this references into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

Also noted in III. B. above there are several regulatory citations in the 1995 SOAP approval that OSM felt were beyond the scope of services authorized by 30 CFR 795 that still remain in this amendment including: 25 PA Code §§ 87.41, 87.42(1), 88.21, and 88.22(1). These requirements are not referenced in federal regulations as being authorized for payment under the SOAP program. The Director is approving subsections 86.81(a)(2)(iii)(A) and (B) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(a)(2)(iii)(A) and (B) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

Finally, also discussed in III. B. above, OSM noted in the 1995 SOAP

amendment approval that the permitting requirements at 25 PA Code 87.77, 88.56 and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks. The references to public parks remain in subsections 86.81(a)(2)(iv)(A), (B) and (C). The Director is approving the reference of §§ 87.77, 88.56 and 89.38 into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The Director is not approving the incorporation of these references into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

The Federal regulations at 30 CFR 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 program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

### Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

## VI. Procedural Determinations

### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget [\*19820] (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 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 date and assumptions 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.

**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
* November 8, 1999 .....	* March 23, 2000 .....	* 25 PA Code §§ 86.80, 86.81, 86.82, 86.83, 86.84, 86.85, 86.86 (deleted), 86.87, 86.91 (deleted), 86.92, 86.94, 86.95 (deleted). Note: The incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is approved to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The incorporation of this reference into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1). 25 PA Code 86.81(a)(2)(iii) is approved to the extent that the SOAP funds are not used to fund the activities required under 25 PA Code §§ 87.41 and 87.42(1) or §§ 88.21 and 88.22(1). The reference of §§ 87.77, 88.56 and 89.38 (regarding archaeological and historic information) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is approved to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The incorporation of these references (regarding public parks) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

#### **§ 938.16 [Amended]**

3. Section 938.16 is amended by removing and reserving paragraph (000).

[FR Doc. 00-7207 Filed 3-22-00; 8:45 am]

BILLING CODE 4310-05-P

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 100

[CGD 05-00-005]

RIN 2115-AE46

#### **Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation

**SUMMARY:** The Coast Guard is implementing the special local

regulations at 33 CFR 100.511 for the 21st Annual Safety at Sea Seminar, a marine event to be held March 25, 2000, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

**DATES:** 33 CFR 100.511 is effective from 11:30 a.m. to 3 p.m. on March 25, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226-1971, (410) 576-2674.

**SUPPLEMENTARY INFORMATION:** The U.S. Naval Academy Sailing Squadron will sponsor the 21st Annual Safety at Sea Seminar on the waters of the Severn

River and Spa Creek at Annapolis, Maryland. Waterborne activities will include demonstrations of life rafts, pyrotechnics, man overboard procedures, and a helicopter rescue. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 10, 2000.

**J.E. Shkor,**

*Vice Admiral, Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 00-7206 Filed 3-21-00; 9:38 am]

BILLING CODE 4910-15-M