

(1) Noncitizenship,  
 (2) Refusal under the provisions of  
 § 51.70(a)(8),

(3) Refusal to grant a discretionary  
 exception under the emergency or  
 humanitarian relief provisions of  
 § 51.71(c), or

(4) Refusal to grant a discretionary  
 exception from geographical limitations  
 of general applicability.

(b) The provisions of this subpart  
 shall otherwise constitute the  
 administrative remedies provided by the  
 Department to persons who are the  
 subjects of adverse action under  
 §§ 51.70, 51.71 or 51.72.

Dated: June 2, 2000.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs,  
 Department of State.*

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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:** Final rule.

**SUMMARY:** OSM is approving an  
 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. The 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.

**EFFECTIVE DATE:** June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr.  
 Robert J. Biggi, Office of Surface Mining  
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**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. You can find  
 background on the Pennsylvania  
 program, including the Secretary's  
 findings, the disposition of comments,  
 and the conditions of the approval in  
 the July 30, 1982 **Federal Register** (47  
 FR 33079). Subsequent actions  
 concerning the regulatory program  
 amendments are codified at 30 CFR  
 938.11, 938.15 and 938.16.

#### II. Submission of the Amendment

By letter dated November 30, 1999  
 (Administrative Record No. PA-849.02),  
 the Pennsylvania Department of  
 Environmental Protection (PADEP)  
 submitted an amendment to its  
 approved permanent regulatory program  
 pursuant to the Federal regulations at 30  
 CFR 732.17(b). Pennsylvania did so as a  
 result of its Regulatory Basics Initiative  
 (RBI) intended to revise regulations  
 considered to be unclear, unnecessary  
 or more stringent than the  
 corresponding Federal regulation. The  
 proposed rulemaking was published in  
 the December 17, 1999 **Federal Register**  
 (64 FR 70644). The public comment  
 period closed on January 18, 2000. No  
 one requested to speak at a public  
 hearing, so no hearing was 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 amendments to  
 the Pennsylvania regulatory program.  
 Revisions not specifically discussed  
 below concern paragraph notations to  
 reflect organizational changes resulting  
 from this amendment.

PADEP is amending 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 is correcting a grammatical  
 error by changing the word "specify" to  
 "specifies" in the opening paragraph.  
 This is a non-substantive change that  
 does not require OSM approval.

##### *Section 86.37 Criteria for Permit Approval or Denial*

PADEP is modifying subdivision  
 (a)(4) to assure activities proposed

under the application have been  
 designed to prevent material damage to  
 the hydrologic balance outside the  
 proposed permit area, while eliminating  
 the reference to damage to the  
 hydrologic balance within the permit  
 area, by adding the word "material"  
 before "damage" and eliminating the  
 words "within and" before the word  
 "outside". The Director finds that the  
 changes described above render  
 § 86.37(a)(4) substantively identical to  
 and therefore no less effective than the  
 corresponding portion of the Federal  
 provision at 30 CFR 773.15(c)(5).

PADEP is modifying subdivision  
 (a)(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 subdivision (6) now  
 state that "[t]he 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". The  
 Director finds that the changes  
 described above render § 86.37(a)(6)  
 substantively identical to and therefore  
 no less effective than the Federal  
 Regulations at 30 CFR 773.15(c)(3) and  
 761.11(c).

##### *Section 86.40 Permit Terms*

PADEP is modifying 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." The Director finds that  
 the changes described above are  
 substantively identical to and therefore  
 no less effective than the Federal  
 Regulations at 30 CFR 773.19(e)(2)(ii).

##### *Section 86.64 Right of Entry*

PADEP is modifying 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 subdivisions (b)(1)  
 and (2) are eliminated and new  
 subdivisions (b)(1) through (3) are  
 added specifying the documents

required. New subsection (c) states that “[t]his 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 subdivision (d)(3) is added to state that the requirements of subsection (d) are in addition to the requirements required by subsections (a) and (b), and existing subsections (d) and (e) are re-lettered as (e) and (f), respectively. Subsection (f) is amended to state that all information required in § 86.64 shall be made part of the permit application. The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 778.15(b) and (c), except for subdivision (d)(3), which has no Federal counterpart. However, subdivision (d)(3) is not inconsistent with 30 CFR 778.15, since it provides that the right of entry requirements of subsection (d), which also have no Federal counterparts, are in addition to, (and therefore do not supersede), the requirements contained in subsections (a) and (b). Also, the Director finds that new subdivisions (b)(2) and (b)(3) satisfy the required amendment at 30 CFR 938.16(l), which is hereby removed.

#### *Section 86.70 Proof of Publication*

PADEP is modifying this section to require that a permit 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. The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 778.13(a) and 778.21, except that § 86.70 also requires a statement of “intent to publish,” which is not required in the Federal regulations. However, since this requirement is in addition to the Federal requirements, it is not inconsistent with the Federal regulations.

#### *Section 86.132 Definitions*

PADEP is modifying the definition of “substantially disturb,” with respect to coal exploration, by adding the word “significant” before “impact,” in order to limit its application to coal exploration activities that have a significant impact on land, air or water resources. 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 \* \* \*” (Emphasis added)

The Director finds that the change described above brings the State’s definition, which OSM previously found to be substantively identical to its Federal counterpart at 30 CFR 701.5 (58 FR 18149, 18151, April 8, 1993), into conformity with the precise language of the Federal definition.

#### *Section 86.133 General Requirements for Coal Exploration*

PADEP is modifying subsection (e) to include a metric tonnage equivalent to the 250 ton limit for coal exploration that may be allowed without a permit, to change the words “less than” to “or less,” and to change the words “or more” to “more than.” The effect of the changes is to allow the department to waive the permitting requirement, to enable coal properties testing and analysis, where 250 tons (226 metric tons) of coal or less are removed, but to require a permit for the removal of more than 250 tons (226 metric tons) of coal. The Director finds that the changes do not render § 86.133(e) less effective than the Federal Regulations at 30 CFR 772.11 and 772.12. However, the required amendment at 30 CFR 938.16(ccc) remains unsatisfied.

#### *Section 86.134 Coal Exploration Performance and Design Standards*

PADEP is modifying this section by eliminating existing subdivisions (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 subdivision (2) that states “Roads used for coal exploration shall comply with the following: \* \* \*” Existing subdivisions (4) and (5) are re-numbered as (3) and (4), existing subdivision (6), which requires revegetation of areas disturbed by coal exploration to be performed by the person who conducts the exploration, or by his agent, is eliminated and new subdivision (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 subdivisions (7) through (12) are re-numbered as (6) through (11) respectively. The Director finds that the changes described above are substantively identical to and therefore no less effective than their Federal regulatory counterparts at 30 CFR 815.15(b) and (e).

#### *Section 86.174 Standards for Release of Bonds*

PADEP is modifying subdivision (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. The Director finds that the change described above renders subdivision (b)(1) substantively identical to and therefore no less effective than the corresponding Federal regulatory language contained in the Federal Regulations at 30 CFR 800.40(c)(2).

#### *Chapter 87, Surface Mining of Coal*

##### *Section 87.1 Definitions*

PADEP is adding, at new subsection (x), a definition of “unmanaged natural habitat.” The term is defined as idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished. Although the Federal Regulations do not have a direct counterpart, the Director finds the State’s definition to be consistent with the definition of “undeveloped land or no current use or land management” at 30 CFR 701.5.

##### *Section 87.77 Protection of Public Parks and Historic Places*

PADEP is modifying subsection (a) by specifying that the permit application requirements to include protective measures apply to publicly owned parks or historic places that are listed on the National Register of Historic Places, and that may be adversely affected by the proposed operations. The Director finds that the changes described render the introductory language of subsection (a) substantively identical to and therefore no less effective than the corresponding introductory language contained in 30 CFR 780.31(a).

##### *Section 87.93 Casing and Sealing of Drilled Holes*

PADEP is modifying subdivision (a)(2) by requiring that exploration holes, other drilled or boreholes, wells or other exposed underground openings be cased, sealed or otherwise managed in order to “minimize,” rather than to “prevent to the maximum extent possible,” damage to the prevailing hydrologic balance. The Director finds that this change renders subdivision (a)(2) substantively identical to and therefore no less effective than corresponding language contained in the Federal Regulations at 30 CFR 816.13.

PADEP is modifying subdivision (e)(2)(iii) pertaining to when the Department may approve lesser distances for the barrier of undisturbed earth, 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." At subsection (e), the minimum required radius for the solid barrier of undisturbed earth that must surround oil and gas wells is now also being expressed in meters, in addition to feet. The Director finds that, while subdivision (e)(2)(iii) has no direct Federal counterpart, the proposed amendments thereto do not render it inconsistent with the Federal Regulations at 30 CFR 816.13.

#### *Section 87.97 Topsoil: Removal*

PADEP is modifying subsection (c) by including a metric conversion figure, in centimeters, which corresponds to the 12 inch topsoil thickness threshold, which if not in existence triggers the requirement to remove, segregate, conserve and replace a twelve inch layer that includes topsoil and other unconsolidated materials as the final surface soil layer. A centimeter measurement is also added for the 12-inch thickness threshold for topsoil and unconsolidated material combined, which if not in existence triggers the requirement to remove, segregate, conserve and replace the topsoil and all unconsolidated materials as the final surface soil layer. These changes are nonsubstantive in nature and do not require OSM approval.

Subsection (f), which currently pertains to "subsoil" substitution requirements, is amended to pertain to "topsoil" substitution requirements. The Director finds that this change renders section 86.97 substantively identical to and therefore no less effective than the counterpart language contained in the Federal Regulations at 30 CFR 816.22(b).

#### *Section 87.101 Hydrologic Balance: General Requirements*

PADEP is modifying subsection (a), which currently requires that surface activities be planned and conducted to "prevent to the maximum extent possible" disturbances to the prevailing hydrologic balance in the permit and adjacent area. As modified, subsection (a) will require that surface activities be planned and conducted to "minimize" such disturbances. This subsection is further modified by the addition of a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. Finally, the PADEP added a provision allowing it to require additional preventative, remedial, or

monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. The Director finds that the changes described above render subsection (a) substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.41(a).

#### *Section 87.106 Hydrologic Balance: Sediment Control Measures*

PADEP is modifying subdivision (1) to require prevention of contributions of sediment to streamflow or runoff to the "extent possible," rather than to the "maximum extent possible," by deleting the word "maximum." The Director finds that this change renders subdivision (1) substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.45(a)(1).

PADEP is also modifying subdivision (3) by changing the language of the requirement from "Prevent erosion to the maximum extent possible" to "Minimize erosion to the extent possible." The Director finds that this change renders subdivision (3) substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.45(a)(3).

#### *Section 87.126 Use of Explosives: Public Notice of Blasting Schedule*

PADEP is modifying 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. The Director finds that the change renders subsection (a) substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.64(b)(1).

#### *Section 87.127 Use of Explosives: Surface Blasting Requirements*

PADEP is modifying subdivision (f)(5) by deleting the prohibition against casting flyrock beyond the "line of property owned or leased by the permittee," and by making the permit boundary the limit beyond which flyrock may not be cast. The Director finds that the change renders subdivision (f)(5) substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.67(c)(3).

#### *Section 87.138 Protection of Fish, Wildlife and Related Environmental Values*

PADEP is modifying this section to require a person conducting surface mining activities to, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife and related environmental values, locate and operate haul and access roads to avoid or minimize impacts to fish and wildlife or other protected species, and to avoid disturbance to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife. Prior to these proposed amendments, this section required that activities use the best technology currently available to prevent such disturbances and adverse impacts. The Director finds that the changes described above render section 87.138 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.97(a) and (e)(2), and to the portion of 30 CFR 816.97(f) that pertains to habitats of unusually high value. PADEP is also modifying subsection (b) by changing the name of the Fish Commission to the Fish and Boat Commission. As modified, subsection (b) remains substantively identical to and therefore no less effective than the corresponding language contained in the Federal regulations at 30 CFR 816.97(b).

#### *Section 87.144 Backfilling and Grading: Final Slopes*

PADEP is modifying subsection (c) by deleting subdivisions (1) through (4) enumerating requirements for terraces. The Director finds that the deletions of these subdivisions, which have no Federal counterparts, do not render subsection (c) less effective than the Federal regulations at 30 CFR 816.102(g)(1). PADEP is also modifying 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. The Director finds that the deletion of these requirements, which have no direct Federal counterparts, does not render the state regulations less effective than the Federal Regulations at 30 CFR 816.102(j).

#### *Section 87.146 Regrading or Stabilizing Rills and Gullies*

PADEP is eliminating the existing subsection and substituting 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.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.95(a) and (b).

#### *Section 87.159 Postmining Land Use*

PADEP is modifying subsection (b) by eliminating subdivisions (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining. These deleted subdivisions have no Federal counterparts.

PADEP is also adding new subdivision (c)(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 subdivisions (c)(3), (4), and (5) are re-lettered as (i), (ii) and (iii) respectively, under new subdivision (c)(3).

PADEP is also eliminating subdivision (c)(6) pertaining to certification of plans for postmining land use by a registered professional engineer. This deleted subdivision has no Federal counterparts pertaining to postmining land uses in general. Existing subdivisions (c)(7), (8) and (9) are re-numbered as (c)(4), (5) and (6), respectively. The Director finds that the changes described above do not render section 87.159 less effective than the Federal Regulations at 30 CFR 816.133(b) and (c)(1).

#### *Section 87.160 Haul Roads and Access Roads*

PADEP is modifying 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 \* \* \*". The Director finds that the changes described above render subsection (a) substantively identical to and therefore no less effective than the

corresponding language contained in the Federal Regulations at 30 CFR 816.150(b)(1).

#### *Section 87.166 Haul Roads and Access Roads: Restoration*

PADEP is modifying this section by deleting the requirement that roads not to be retained for the approved postmining land use be reclaimed "immediately" after the road is no longer needed for the associated surface mining activities, and substituting a requirement that such reclamation occur "as soon as practicable."

PADEP is also modifying subdivision (4) by eliminating the requirement that roadbeds be plowed. The subdivision now reads "Roadbeds shall be ripped or scarified." The Director finds that the changes described render section 87.166 substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.150(f) and (f)(6).

#### *Section 87.173 Support Facilities and Utility Installations*

PADEP is modifying subsection (a) by eliminating criteria from the opening paragraph and deleting subdivisions (1) and (2). The deleted criteria have no Federal regulatory counterparts. PADEP is also adding new subdivisions (1) and (2), which require that support facilities be located, maintained and used in a manner that:

(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.

The Director finds that the changes described above render section 87.173 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.181(b).

#### *Section 87.174 Steep Slope Operations*

PADEP is eliminating subsection (g), which prohibits construction of unlined or unprotected drainage channels on backfilled areas unless approved by the PADEP as stable and not subject to erosion. This subsection has no direct Federal counterpart. The Director finds that the deletion of subsection (g) does not render section 87.174 less effective than the Federal Regulations at 30 CFR 816.107.

#### *Section 87.176 Auger Mining*

PADEP is deleting subsection (d), which prohibits auger mining to the rise of the coal unless it is demonstrated to the PADEP's satisfaction that drainage from the auger hole will not pose a pollution threat to surface waters and will comply with applicable effluent standards. Subsection (d) has no direct Federal counterpart. Existing subsection (e) is re-lettered as (d), and contains non-substantive changes in wording that are intended to improve the clarity of the subsection. The Director finds that the changes described above do not render section 87.176 less effective than the Federal Regulations at 30 CFR 819.11.

#### *Section 87.209 Criteria and Schedule for Release of Bonds on Pollution Abatement Areas of Remining Operations*

PADEP is modifying subsection (a), which pertains to the first phase of release of the bond for the pollution abatement area, by raising the amount of the bond that may be released from 50% to 60%, where the operator has not caused degradation of the baseline pollution load at any time during a period of six months prior to the bond release request, and until bond release is approved as shown by all ground and surface water monitoring. PADEP is modifying subsection (b), which pertains to the second phase of release of the bond for the pollution abatement area, by deleting the phrase that allows the additional release of up to 35% of the amount of the bond 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.

Next, PADEP is also modifying subdivision (b)(3)(ii)(A)(I) so that an operator can receive approval for the second phase of bond release where it demonstrates that it has not caused degradation of the baseline pollution load for a period of twelve months prior to the application for bond release and until bond release is approved.

Finally, PADEP is modifying subdivision (c)(4) pertaining to the release of the remaining portion of the bond by deleting the requirement to measure the applicable liability period from the date of release of the second phase of the bond. The Director finds that the changes described above do not render section 87.209 less effective than the general bond release criteria contained in the Federal regulations at 30 CFR 800.40(c).

*Chapter 88, Anthracite Coal**Section 88.1 Definitions*

PADEP is adding, at new subsection (x), a definition of "unmanaged natural habitat." The term is defined as idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished. Although the Federal Regulations do not have a direct counterpart, the Director finds the State's definition to be consistent with the definition of "undeveloped land or no current use or land management" at 30 CFR 701.5.

*Section 88.56 Protection of Public Parks and Historic Places*

PADEP is modifying subsection (a) by specifying that the permit application requirements to include protective measures apply to publicly owned parks or historic places that are listed on the National Register of Historic Places, and that may be adversely affected by the proposed operations. The Director finds that the changes described above render the introductory language of subsection (a) substantively identical to and therefore no less effective than the corresponding introductory language contained in 30 CFR 780.31(a).

*Section 88.83 Sealing of Drilled Holes: General Requirements*

PADEP is modifying subdivision (a)(2) by requiring that exploration holes, other drilled or boreholes, wells or other exposed underground openings be sealed or otherwise managed in order to "minimize," rather than to "prevent to the maximum extent possible," damage to the prevailing hydrologic balance. PADEP is modifying subdivision (e)(2)(iii) pertaining to when the Department may approve lesser distances for the barrier of undisturbed earth, 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." In subsection (e), the minimum required radius for the solid barrier of undisturbed earth that must surround oil and gas wells is now also being expressed in meters, in addition to feet. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.91 Hydrologic Balance: General Requirements*

PADEP is modifying subsection (a), which currently requires that surface activities be planned and conducted to "prevent to the maximum extent possible" disturbances to the prevailing hydrologic balance in the permit and adjacent area. As modified, subsection (a) will require that surface activities be planned and conducted to "minimize" such disturbances. This subsection is further modified by the addition of a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. Finally, the PADEP added a provision allowing it to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.96 Hydrologic Balance: Sediment Control Measures*

PADEP is modifying subdivision (l) to require prevention of contributions of sediment to streamflow or runoff to the "extent possible," rather than to the "maximum extent possible," by deleting the word "maximum." PADEP is also modifying subdivision (3) by changing the language of the requirement from "Prevent erosion to the maximum extent possible" to "Minimize erosion to the extent possible." In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.118 Backfilling and Grading: Final Slopes*

PADEP is modifying subsection (c) by deleting subdivisions (1) through (4) enumerating requirements for terraces. PADEP is also modifying 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. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program

performance standards for anthracite mines in Pennsylvania.

*Section 88.133 Postmining Land Use*

PADEP is modifying 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), thereby clarifying that affected areas be restored to conditions capable of supporting the uses they were capable of supporting prior to mining, or that they be restored to higher or better uses, prior to bond release. PADEP is also modifying subsection (b) by eliminating subdivisions (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining. PADEP is also adding new subdivision (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 subdivisions (3) and (4) are re-lettered as (i) and (ii), respectively, under new subdivision (3). PADEP is also eliminating subdivision (5) pertaining to certification of plans for postmining land use by a registered professional engineer. Existing subdivisions (6), (7) and (8) are re-numbered as (4), (5) and (6), respectively. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.138 Haul Roads and Access Roads: General*

PADEP is modifying 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 \* \* \*". In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.144 Haul Roads and Access Roads: Restoration*

PADEP is modifying this section by deleting the requirement that roads not to be retained for the approved postmining land use be reclaimed "immediately" after the road is no longer needed for the associated surface mining activities, and substituting a requirement that such reclamation occur

“as soon as practicable.” In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.191 Hydrologic Balance: Sediment Control Measures*

PADEP is modifying subdivision (l) to require prevention of contributions of sediment to streamflow or runoff to the “extent possible,” rather than to the “maximum extent possible,” by deleting the word “maximum.” PADEP is also modifying subdivision (3) by changing the language of the requirement from “Prevent erosion to the maximum extent possible” to “Minimize erosion to the extent possible.” In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.221 Postmining Land Use*

PADEP is modifying subsection (b) by eliminating subdivisions (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining. PADEP is also adding new subdivision (c)(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 subdivisions (3) and (4) are re-lettered as (i) and (ii), respectively, under new subdivision (3).

PADEP is also eliminating subdivision (5) pertaining to certification of plans for postmining land use by a registered professional engineer. Existing subdivisions (6), (7) and (8) are re-numbered as (4), (5) and (6), respectively. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.231 Haul Roads and Access Roads: General*

PADEP is modifying 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 \* \* \*”. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11,

the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.237 Haul Roads and Access Roads: Restoration*

PADEP is modifying this section by deleting the requirement that roads not to be retained for the approved postmining land use be reclaimed “immediately” after the road is no longer needed for the associated surface mining activities, and substituting a requirement that such reclamation occur “as soon as practicable.” In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.283 Sealing of Drilled Holes: General Requirements*

PADEP is modifying subdivision (e)(2)(iii) pertaining to when the Department may approve lesser distances for the barrier of undisturbed earth, 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.” In subsection (e), the minimum required radius for the solid barrier of undisturbed earth that must surround oil and gas wells is now also being expressed in meters, in addition to feet. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.291 Hydrologic Balance: General Requirements*

PADEP is modifying subsection (a), which currently requires that surface activities be planned and conducted to “prevent to the maximum extent possible” disturbances to the prevailing hydrologic balance in the permit and adjacent area. As modified, subsection (a) will require that surface activities be planned and conducted to “minimize” such disturbances. This subsection is further modified by the addition of a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. Finally, the PADEP added a provision allowing it to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic

balance outside the permit area is prevented. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.296 Hydrologic Balance: Sediment Control Measures*

PADEP is modifying subdivision (l) to require prevention of contributions of sediment to streamflow or runoff to the “extent possible,” rather than to the “maximum extent possible,” by deleting the word “maximum.” In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.334 Postdisposal Land Use*

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

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

PADEP is also modifying subdivision (c)(1) by deleting the reference to “surface mining” and substituting “coal refuse disposal.”

PADEP is also adding new subdivision (c)(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 subdivisions (3) and (4) are re-lettered as (i) and (ii) respectively, under new subdivision (3), and (i) is further changed by deleting the reference to “surface mining” and substituting “coal refuse disposal.”

PADEP is also eliminating subdivision (5) pertaining to certification of plans for postdisposal land use by a registered professional engineer. Existing subdivisions (6), (7), and (8) are re-numbered as (4), (5) and (6), respectively. In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving these amendments to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.335 Haul Roads and Access Roads: General*

PADEP is modifying 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. \* \* \*" In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.341 Haul Roads and Access Roads: Restoration*

PADEP is modifying this section by deleting the requirement that roads not to be retained for the approved postmining land use be reclaimed "immediately" after the road is no longer needed for the associated surface mining activities, and substituting a requirement that such reclamation occur "as soon as practicable." In accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, the Director is approving this amendment to the special permanent program performance standards for anthracite mines in Pennsylvania.

*Section 88.492 Minimum Requirements For Reclamation and Operation Plan*

PADEP is modifying subdivision (f)(1) by specifying that the permit application requirements to include protective measures apply to publicly owned parks or historic places that are listed on the National Register of Historic Places, and that may be adversely affected by the proposed operations. The Director finds that the changes described above render the introductory language of subsection (a) substantively identical to and therefore no less effective than the corresponding introductory language contained in 30 CFR 780.31(a).

*Section 88.509 Criteria and Schedule for Release of Bonds on Pollution Abatement Areas of Remining Operations*

PADEP is modifying subsection (a), which pertains to the first phase of release of the bond for the pollution abatement area, by raising the amount of the bond that may be released from 50% to 60%, where the operator has not caused degradation of the baseline pollution load at any time during a period of six months prior to the bond release request, and until bond release is approved as shown by all ground and surface water monitoring. PADEP is

modifying subsection (b), which pertains to the second phase of release of the bond for the pollution abatement area, by deleting the phrase that allows the additional release of up to 35% of the amount of the bond 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.

Next, PADEP is also modifying subdivision (b)(3)(ii)(A)(I) so that an operator can receive approval for the second phase of bond release where it demonstrates that it has not caused degradation of the baseline pollution load for a period of twelve months prior to the application for bond release and until bond release is approved.

Finally, PADEP is modifying subdivision (c)(4) pertaining to the release of the remaining portion of the bond by deleting the requirement to measure the applicable liability period from the date of release of the second phase of the bond. The Director finds that the changes described above do not render section 88.509 less effective than the general bond release criteria contained in the Federal regulations at 30 CFR 800.40(c).

*Chapter 89, Underground Mining of Coal and Coal Preparation Facilities*

*Section 89.38 Archaeological and Historical Resources and Public Parks*

PADEP is changing the title of this section to Archaeological and historical resources, public parks and publicly owned parks.

PADEP is modifying subsection (b) by specifying that the permit application requirements to include protective measures apply to publicly owned parks or historic places that are listed on the National Register of Historic Places, and that may be adversely affected by the proposed operations. The Director finds that the changes described above render the introductory language of subsection (b) substantively identical to and therefore no less effective than the corresponding introductory language contained in 30 CFR 784.17(a).

*Section 89.65 Protection of Fish, Wildlife and Related Environmental Values*

PADEP is modifying this section to require a person conducting surface mining activities to, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife and related environmental values, locate and operate haul and access roads to avoid or minimize

impacts to fish and wildlife or other protected species, and to avoid disturbance to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife. Prior to these proposed amendments, this section required that activities use the best technology currently available to prevent such disturbances and adverse impacts. The Director finds that the changes described above render section 89.65 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 817.97(a) and (e)(2), and at the portion of 30 CFR 817.97(f) that pertains to habitats of unusually high value.

*Section 89.67 Support Facilities*

PADEP is modifying subsection (a) by eliminating criteria from the opening paragraph and deleting subdivisions (1) and (2). The deleted criteria have no Federal regulatory counterparts. PADEP is also adding new subdivisions (1) and (2), which require that support facilities be located, maintained and used in a manner that:

(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.

The Director finds that the changes described above render section 89.67 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 817.181(b).

*Section 89.82 Protection of Fish, Wildlife and Related Environmental Values*

PADEP is modifying this section to require a person conducting surface mining activities to, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife and related environmental values. Prior to this proposed amendment, this section required that activities use the best technology currently available to prevent such disturbances and adverse impacts. The Director finds that the changes described above render section 89.82 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 817.97(a).

PADEP is also modifying subsections (b) and (e) by changing the name of the Fish Commission to the Fish and Boat Commission. As modified, subsections (b) and (e) remain substantively identical to and therefore no less effective than the corresponding language contained in the Federal regulations at 30 CFR 817.97(b).

#### *Section 89.87 Regrading or Stabilizing Rills and Gullies*

PADEP is eliminating the existing subsections and substituting 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.

The Director finds that the changes described above are substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 817.95.

#### *Section 89.88 Postmining Land Use*

PADEP is modifying subsection (b) by eliminating subdivisions (2) and (3) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining. These deleted subdivisions have no Federal counterparts.

PADEP is also adding new subdivision (c)(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." The criteria, which are part of the existing program, are now included in subdivision (c)(2), following the above-quoted introductory sentence.

PADEP is also eliminating subdivision (c)(3) pertaining to certification of plans for postmining land use by a registered professional engineer. This deleted subdivision has no Federal counterpart. Existing subdivisions (c)(4), (5), (6) and (7) are re-numbered as (c)(3), (4), (5) and (6), respectively.

The Director finds that the changes described above do not render section 89.88 less effective than the Federal

Regulations at 30 CFR 817.133(b) and (c)(1).

#### *Section 89.90 Restoration of Roads*

PADEP is modifying subsection (a) by deleting the requirement that roads not to be retained for the approved postmining land use be reclaimed "immediately" after the road is no longer needed for the associated surface mining activities, and substituting a requirement that such reclamation occur "as soon as practicable."

PADEP is also modifying subdivision (a)(4) by eliminating the requirement that roadbeds be plowed. The subdivision now reads "Roadbeds shall be ripped or scarified." The Director finds that the changes described render section 89.90 substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 817.150(f) and (f)(6).

#### *Chapter 90, Coal Refuse Disposal*

##### *Section 90.1 Definitions*

PADEP is adding, at new subsection (x), a definition of "unmanaged natural habitat." The term is defined as idle land which does not require a specific management plan after the reclamation and revegetation have been accomplished. Although the Federal Regulations do not have a direct counterpart, the Director finds the State's definition to be consistent with the definition of "undeveloped land or no current use or land management" at 30 CFR 701.5.

##### *Section 90.40 Protection of Public Parks and Historic Places*

PADEP is modifying subsection (a) by specifying that the permit application requirements to include protective measures apply to publicly owned parks or historic places that are listed on the National Register of Historic Places, and that may be adversely affected by the proposed operations. The Director finds that the changes described above render the introductory language of subsection (a) substantively identical to and therefore no less effective than the corresponding introductory language contained in 30 CFR 780.31(a).

##### *Section 90.93 Casing and Sealing of Drilled Holes and Underground Workings*

PADEP is modifying 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). While this subsection has no precise Federal

counterpart, the Director finds that the change in statutory cross-references does not render it inconsistent with the Federal regulations at 30 CFR 816.13.

PADEP is modifying subdivision (e)(2)(iii) pertaining to when the Department may approve lesser distances for the barrier of undisturbed earth, 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." At subsection (e), the minimum required radius for the solid barrier of undisturbed earth that must surround oil and gas wells is now also being expressed in meters, in addition to feet. The Director finds that, while subdivision (e)(2)(iii) has no direct Federal counterpart, the proposed amendments thereto do not render it inconsistent with the Federal Regulations at 30 CFR 816.13.

##### *Section 90.97 Topsoil: Removal*

PADEP is modifying subsection (c) by including a metric conversion figure, in centimeters, which corresponds to the 12 inch topsoil thickness threshold, which if not in existence triggers the requirement to remove, segregate, conserve and replace a twelve inch layer that includes topsoil and other unconsolidated materials as the final surface soil layer. A centimeter measurement is also added for the 12-inch thickness threshold for topsoil and unconsolidated material combined, which if not in existence triggers the requirement to remove, segregate, conserve and replace the topsoil and all unconsolidated materials as the final surface soil layer. These changes are nonsubstantive in nature and do not require OSM approval.

Subsection (f) is amended, at the end of the second sentence, by deleting the word "subsoil" and replacing it with the word "topsoil." The Director finds that this change renders section 90.97 substantively identical to and therefore no less effective than the counterpart language contained in the Federal Regulations at 30 CFR 816.22(b).

##### *Section 90.101 Hydrologic Balance: General Requirements*

PADEP is modifying subsection (a), which currently requires that surface activities be planned and conducted to "prevent to the maximum extent possible" disturbances to the prevailing hydrologic balance in the permit and adjacent area. As modified, subsection (a) will require that surface activities be planned and conducted to "minimize" such disturbances. This subsection is



further modified by the addition of a requirement that surface mining activities shall be planned and conducted to prevent material damage to the hydrologic balance outside the permit area. Finally, the PADEP added a provision allowing it to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. The Director finds that the changes described above render subsection (a) substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.41(a).

*Section 90.106 Hydrologic Balance: Erosion and Sedimentation Control*

PADEP is modifying subdivision (a)(l) to require prevention of contributions of sediment to streamflow or runoff to the "extent possible," rather than to the "maximum extent possible," by deleting the word "maximum." The Director finds that this change renders subdivision (a)(1) substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.45(a)(1).

PADEP is also modifying subdivision (3) by changing the language of the requirement from "Prevent erosion to the maximum extent possible" to "Minimize erosion to the extent possible." The Director finds that this change renders subdivision (3) substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.45(a)(3).

*Section 90.134 Haul Roads and Access Roads: General*

PADEP is modifying subsection (a) by eliminating the phrase "prevent, to the maximum extent possible", and substituting the words "control or prevent" prior to "contributions of sediment to streams or runoff \* \* \*". The Director finds that the changes described above render subsection (a) substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.150(b)(1), with one exception. In amending this subsection, the PADEP deleted any requirement with respect to erosion. Therefore, the Director is requiring that Pennsylvania amend its performance standards for coal refuse disposal to require that haul roads and access roads be designed, constructed and maintained to control or prevent erosion.

*Section 90.140 Haul Roads and Access Roads: Restoration*

PADEP is modifying this section by deleting the requirement that roads not to be retained for the approved postmining land use be reclaimed "immediately" after the road is no longer needed for the associated surface mining activities, and substituting a requirement that such reclamation occur "as soon as practicable."

PADEP is also modifying subdivision (4) by eliminating the requirement that roadbeds be plowed. The subdivision now reads "Roadbeds shall be ripped or scarified." The Director finds that the changes described render section 90.140 substantively identical to and therefore no less effective than the corresponding language contained in the Federal Regulations at 30 CFR 816.150(f) and (f)(6).

*Section 90.147 Support Facilities and Utility Installations*

PADEP is modifying subsection (a) by eliminating criteria from the opening paragraph and deleting subdivisions (1) and (2). The deleted criteria have no Federal regulatory counterparts. The criteria to locate, maintain and use buildings is now included in new subdivisions (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.

The Director finds that the changes described above render section 90.147 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.181(b).

*Section 90.150 Protection of Fish, Wildlife and Related Environmental Values*

PADEP is modifying this section to require a person conducting surface mining activities to, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife and related environmental values, locate and operate haul and access roads to avoid or minimize impacts to fish and wildlife or other protected species, and to avoid disturbance to, enhance where

practicable, or restore, habitats of unusually high value for fish and wildlife. Prior to these proposed amendments, this section required that activities use the best technology currently available to prevent such disturbances and adverse impacts. The Director finds that the changes described above render section 90.150 substantively identical to and therefore no less effective than the Federal Regulations at 30 CFR 816.97(a) and (e)(2), and to the portion of 30 CFR 816.97(f) that pertains to habitats of unusually high value. PADEP is also modifying subsections (b) and (d) by changing the name of the Fish Commission to the Fish and Boat Commission. As modified, subsections (b) and (d) remain substantively identical to and therefore no less effective than the corresponding language contained in the Federal regulations at 30 CFR 816.97(b).

*Section 90.166 Postdisposal Land Use*

PADEP is modifying subsection (a) by changing the reference from "Subchapter E (relating to coal exploration)" to "Subchapter F (relating to bonding and insurance requirements)." The Director finds that this change does not render subsection (a) less effective than the corresponding Federal regulations at 30 CFR 816.133(a).

PADEP is modifying subsection (b) by eliminating subdivisions (3) and (4) pertaining to land that has received improper management or was changed within 5 years of the beginning of mining. These deleted subdivisions have no Federal counterparts.

PADEP is also adding new subdivision (c)(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 subdivisions (c)(3), (4), and (5) are re-lettered as (i), (ii) and (iii) respectively, under new subdivision (c)(3).

PADEP is also eliminating subdivision (c)(6) pertaining to certification of plans for postdisposal land use by a registered professional engineer. This deleted subdivision has no Federal counterpart. Existing subdivisions (c)(7), (8) and (9) are re-numbered as (c)(4), (5) and (6), respectively. The Director finds that the changes described above do not render section 90.166 less effective than the Federal Regulations at 30 CFR 816.133(b) and (c)(1).

#### IV. Summary and Disposition of Comments

##### *Federal Agency Comments*

On December 3, 1999, we asked for comments from various Federal agencies who may have an interest in the Pennsylvania amendment. (Administrative Record Number 849.03). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. Two offices of the Mine Safety and Health Administration (MSHA) responded in letters dated December 22, 1999 and December 28, 1999 (Administrative Record Numbers 849.06 and 849.07, respectively). The only comment made noted that the minimum static safety factor of 1.3 is included in PA Chapters 87 and 88 for outcrops of a terrace greater than 1v:2h=50%, whereas the Federal Regulations at 30 CFR 77.215(h) specify that the minimum factor should be 1.5 for refuse piles. In response, the Director notes that neither of the Pennsylvania provisions cited by MSHA pertain to refuse piles. Rather, the provisions, at sections 87.144 and 88.118, contain general requirements for backfilling and grading of bituminous and anthracite surface coal mining operations, respectively. Use of the 1.3 minimum static safety factor for such operations is also provided for in the Federal regulations at 30 CFR 816.102(a)(3). Regardless, Pennsylvania is deleting both of these provisions in this amendment, as discussed above.

##### *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.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary.

OSM did, however request comments from EPA, and EPA responded in its letter dated December 13, 1999 (Administrative Record Number 849.04). EPA commented that the amendment contained slight wording changes that appeared to lessen the emphasis on preventing water quality impacts. As examples, EPA noted that Section 88.335, Haul Roads and Access Roads, and Section 88.191, Hydrologic Balance: Sediment Control Measures, were revised to require that erosion be controlled or prevented (88.335) and

minimized to the extent possible (88.191), rather than prevented to the maximum extent possible, as both sections previously required. EPA also noted, however, that its understanding is that the actual requirements for erosion and sedimentation control and preventing water quality impacts will not be reduced. As explained above in the Director's Findings, OSM approved both sections in accordance with section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11.

##### *Public Comments*

No comments were received in response to our request for public comments.

#### V. Director's Decision

Based on the above findings, we are approving the amendments to the Pennsylvania regulatory program. The required amendment at 30 CFR 938.16(l) is being removed. However, the Director is requiring that Pennsylvania amend its performance standards for coal refuse disposal to require that haul roads and access roads be designed, constructed and maintained to control or prevent erosion.

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 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.

#### VI. Procedural Determinations

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulations.

##### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining

operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart 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 for the counterpart federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or

local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

*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: June 12, 2000.

**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 30, 1999 .....	June 26, 2000 .....	25 Pa. Code 86.2, 86.37, 86.40, 86.64, 86.70, 86.132–86.134, 86.174, 87.1, 87.77, 87.93, 87.97, 87.101, 87.106, 87.126, 87.127, 87.138, 87.144, 87.146, 87.159, 87.160, 87.166, 87.173, 87.174, 87.176, 87.209, 88.1, 88.56, 88.83, 88.91, 88.96, 88.118, 88.133, 88.138, 88.144, 88.191, 88.221, 88.231, 88.237, 88.283, 88.291, 88.296, 88.334, 88.335, 88.341, 88.492, 88.509, 89.38, 89.65, 89.67, 89.82, 89.87, 89.88, 89.90, 90.1, 90.40, 90.93, 90.97, 90.101, 90.106, 90.134, 90.140, 90.147, 90.150, 90.166.

3. Section 938.16 is amended by removing and reserving paragraph (ll) and by adding paragraph (gggg) as follows:

**§ 938.16 Required regulatory program amendments.**

\* \* \* \* \*

(ll) [Reserved]

\* \* \* \* \*

(gggg) By August 25, 2000, Pennsylvania shall amend its performance standards for coal refuse disposal, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the state, to require that haul roads and access roads be designed, constructed and maintained to control or prevent erosion.

[FR Doc. 00–16087 Filed 6–23–00; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD01–00–145]

**RIN 2115–AA97**

**Safety Zone: Fireworks Display, Pier 54, Hudson River, New York**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for a fireworks display located on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

**DATES:** This rule is effective from 10 p.m. (e.s.t.), until 11:30 p.m. (e.s.t.) on June 26, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as

being available in the docket, are part of docket (CGD01–00–145) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4012.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM for the event. Further, it is a local, community supported event with minimal impact on the waterway, vessels may still transit through the