

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; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact

that the State submittal that 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 an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 8, 2002.

Allen D. Klein,
Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

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

2. Section 917.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* April 25, 2002	* November 6, 2002	* 2002 HB 809, Kentucky Revised Statutes at Chapter 350.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-136-FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed to revise its program at 25 Pa. Code Sections 86.37(a)(5), 87.160(a), 88.138(a), 88.231(a), 88.335(a), and 90.134(a) about criteria for permit approval or denial and for performance standards for retention of roads following completion of surface mining activities. Pennsylvania intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and to clarify ambiguities.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782-4036. Email: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of

approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

By letter dated February 25, 2002, Pennsylvania sent us an amendment to its program (Administrative Record No. PA 889.00) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendment in response to the required program amendment at 30 C.F.R. 938.16(gggg) and to include changes made at its own initiative.

We announced receipt of the proposed amendment in the April 16, 2002, **Federal Register** (67 FR 18518). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 16, 2002. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at

30 CFR 732.15 and 732.17. We are approving the amendment.

a. Revisions to Pennsylvania's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

In response to the required amendment found at 30 CFR 938.16(gggg), Pennsylvania proposed a revision to 25 Pa. Code 90.134(a). The proposed amendment contains language making the rule similar to the corresponding sections of the Federal regulations.

30 CFR 938.16(gggg) requires Pennsylvania to amend its performance standards for coal refuse disposal by requiring that haul roads and access roads be designed, constructed, and maintained to control or prevent erosion. Pennsylvania proposed to satisfy this required amendment by adding the phrase, "erosion and" to 25 Pa. Code 90.134(a). The language of the section now reads, "[h]aul roads and access roads shall be designed, constructed and maintained to control or prevent: erosion and contributions of sediment to streams or runoff outside the affected area * * *". Since Pennsylvania added the required language, we find that the proposed rule satisfies the required amendment and are therefore approving the amendment.

We are also approving the State's proposed changes to 25 Pa. Code 86.37, which contains criteria for permit approval or denial. The current language of 86.37(a)(5) requires that the "proposed permit area" exclude several enumerated categories.

The amendment we are approving replaces the phrase "the proposed permit area" with "the area covered by the operator's bond and upon which the operator proposes to conduct surface mining activities within the boundary of the proposed surface or coal mining activities permit." Thus, the issue presented by this proposed amendment is whether the proposed language is no less effective than the Federal regulations at 30 CFR 773.15(c), which provide, as a precondition to permit approval, that the "permit area" not include certain protected lands. Based on the following discussion, we find that the proposed language is no less effective than its Federal counterpart.

The Federal definition of "permit area" is "the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining

and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area." 30 CFR 701.5. Like the Federal definition, Pennsylvania's proposed amendment includes the area covered by an operator's bond and upon which surface coal mining and reclamation operations will be conducted as designated in the permit. However, unlike the Federal definition, the proposed language does not explicitly include "all disturbed areas."

Although the proposed language does not explicitly cover all disturbed areas, it implicitly includes such areas by including the area covered by the operator's bond. Under 25 Pa. Code 86.143(b), an operator's bond must cover all disturbed areas. It states that "[a]n operator may not disturb surface acreage * * * prior to receipt of approval from the Department of a bond and issuance of a permit covering the surface acreage to be affected." Thus, all areas to be disturbed must be covered by a bond. Further, 25 Pa. Code 86.143(c) provides that liability on the bond shall cover activities within the permit area as well as "effects resulting from the mining of the permit area * * *". Therefore, because the proposed amendment refers to an area of land that is as inclusive as the "permit area," as defined in the Federal regulation, the amendment is no less effective than the Federal regulations at 30 CFR 773.15(c) and can be approved.

b. Deletions of Pennsylvania Regulatory Provisions With No Corresponding Federal Regulations or Statutes

We are approving Pennsylvania's proposed change regarding performance standards for haul roads and access roads. The State proposed to amend its regulations at 25 Pa. Code Sections 87.160(a), 88.138(a), 88.231(a), 88.335(a), and 90.134(a) by removing the requirement that a haul road's or an access road's maintenance plan must be approved as part of the postmining land use before the road can be retained at the conclusion of mining activities. We are approving the proposed amendment because no Federal statutory or regulatory requirement exists mandating that a maintenance plan for haul or access roads be approved as part of a postmining land use.

30 CFR 780.37(a) and 30 CFR 784.24(a) require that each applicant for a surface coal mining and reclamation permit submit plans and drawings for each road to be constructed, used, or maintained within the permit area. These requirements include plans to

remove and reclaim each road not to be "retained under an approved postmining land use." 30 CFR 780.37(a)(6), 784.24(a)(6). Thus, while these Federal provisions imply that a road to be retained after mining and reclamation must be approved as part of the postmining land use, they do not require that a maintenance plan for such road be approved.

Similarly, 30 CFR 816.150(f) and 817.150(f) set forth reclamation requirements for roads not being retained under an approved postmining land use. Like 30 CFR 780.37(a) and 784.24(a), 30 CFR 816.150(f) and 817.150(f) only refer to roads, not any associated maintenance plans, as being approved as part of the postmining land use. Since neither SMCRA or its implementing regulations require a road maintenance plan to be approved as part of a postmining land use, the removal of such requirement by Pennsylvania does not render its program inconsistent with, less stringent than, or less effective than corresponding Federal law or regulations. Therefore, we are approving the amendment.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in an April 16, 2002 **Federal Register** notice, 67 FR 18518, but did not receive any specific comments. However, the Pennsylvania Coal Association (PCA) generally supported the amendment and urged us to approve it. It noted that the amendment will allow efficient and effective permitting and haul road maintenance practices.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. 889.01). The Mine Safety and Health Administration merely noted that the modifications in the amendment appeared to be minor. The U.S. Environmental Protection Agency (EPA) stated that no apparent inconsistencies exist between the amendment and the Clean Water Act or other statutes or regulations under its jurisdiction.

(EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under

the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). We did not seek EPA concurrence on this amendment because we determined that it contains no such provisions.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 1, 2002, we requested comments on Pennsylvania's amendment (Administrative Record No. 889.01), but neither the SHPO nor the ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Pennsylvania sent us. To implement this decision, we are amending the Federal regulations at 30 CFR Part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Pennsylvania program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

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

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 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 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 because each 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 the Federal regulations at 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.

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 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies 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. 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; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based 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 an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 4, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 938 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 November 6, 2002 to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
February 25, 2002	November 6, 2002	25 Pa. Code 86.37, 87.160, 88.138, 88.231, 88.335, 90.134, 87.160.

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraph (gggg).
[FR Doc. 02-28200 Filed 11-5-02; 8:45 am]
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement**

30 CFR Part 943

[SPATS No. TX-048-FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations concerning valid existing rights. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548. Telephone: (918) 581-6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program on February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated July 25, 2001 (Administrative Record No. TX-653.02), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. TX-653), that we sent to Texas under 30 CFR 732.17(c). Texas proposed to amend Title 16 Texas Administrative Code Chapter 12.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48396). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 22,

2001. We did not receive any comments and did not hold a public hearing or meeting because no one requested one.

During our review of the amendment, we identified incorrect reference citations and concerns relating to the definition of "valid existing rights." We notified Texas of these concerns by an e-mail dated September 24, 2001, and a letter dated June 14, 2002 (Administrative Record Nos. TX-653.04 and TX-653.07, respectively). By letters dated October 22, 2001, June 5, 2002, and June 18, 2002 (Administrative Record Nos. TX-653.05, TX-653.06, and TX-653.08, respectively), Texas sent us additional explanatory information and revisions to its program amendment.

Based upon Texas' additional explanatory information and revisions to its amendment, we reopened the public comment period in the August 13, 2002, **Federal Register** (67 FR 52664). The public comment period closed on August 28, 2002. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.