

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 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2003.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 938**

[PA-142-FOR]

**Pennsylvania Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing the proposed removal of a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment concerns configuration and species composition for reclaimed forest land.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t. July 3, 2003. If requested, we will hold a public hearing on the amendment on June 30, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on June 18, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

George Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036, Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Joseph Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg,

Pennsylvania 17105-8461, Telephone: (717) 787-5103.

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

**SUPPLEMENTARY INFORMATION:**

I. Background on the Pennsylvania Program  
II. Description of the Proposed Amendment  
III. Public Comment Procedures  
IV. 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 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 of the Pennsylvania program 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. Description of the Proposed Amendment**

Federal regulations at 30 CFR 938.16(fff) require Pennsylvania to submit a proposed amendment to sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) of the Pennsylvania Code "to require that the configuration and species composition for reclaimed forest land be reviewed and approved, either on a site-by-site basis or a program wide basis, by the Bureau of Forestry [the Bureau]." These provisions of the Pennsylvania Code are excerpted below:

Section 87.151(d)

(d) When the approved postmining land use is fish and wildlife habitat, unless alternative plans are approved or required by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines

established by the Fish and Boat Commission and the Game Commission.

Section 89.86(e)(2)(ii)(C)

(C) When the approved postmining land use is wildlife habitat, a minimum of 75% of the land affected shall be planted with a mixture and minimum of 400 woody plants per acre. The configuration and species composition of the cover types shall be established in accordance with guidelines established by the Fish and Boat Commission and the Game Commission.

Section 90.155(d)

(d) When the approved postdisposal land use is wildlife habitat, unless alternative plans are approved by the Department, a minimum of 75% of the land affected shall be planted with a mixture of woody species which provides a diverse plant community. The remaining affected area shall be planted to an approved herbaceous cover. The configuration and species composition of the cover types shall be established in accordance with guidelines of the Fish and Boat Commission and Game Commission.

While similar to the Federal regulations at 30 CFR 816/817.116(b)(3)(i), the regulations cited above do not require that minimum stocking and planting arrangements be established upon consultation and approval by the State agencies responsible for the administration of the forestry program. In Pennsylvania, the Bureau of Forestry is responsible for the administration of the forestry program. Therefore, in the April 8, 1993 **Federal Register** (58 FR 18149), we required Pennsylvania to amend sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) to require approval by the Bureau of Forestry on either a site-by-site or program-wide basis.

By letter dated January 30, 2002, Pennsylvania Department of Environmental Protection (DEP) submitted a comparison of the State regulations referred to above and the corresponding Federal regulations along with its explanation of why Pennsylvania's regulations are as effective as their Federal counterparts. Following this correspondence, OSM's Harrisburg Field Office, by letter dated February 22, 2002 (Administrative Record No. PA-803.24), submitted a request to the Bureau that it review the regulations at issue. By letter dated March 20, 2002 (Administrative Record No. PA-803.25), the Bureau approved the subject regulations.

In its letter, the Bureau stated that it "approve[d] of the Pennsylvania DEP Protection Regulations, particularly the relevant portions of sections 87.151(d), 89.86(e)(2)(ii)(C), 90.155(d), 90.155(C), 87.155(b)(2), 89.86(e)(2)(ii), and 90.159(b)(2)." The latter four regulations approved in the Bureau's letter contain species composition and configuration

rules that apply to reclaimed forest land. Because the Bureau has approved the configuration and species composition for reclaimed forest land, as required under 30 CFR 938.16(fff), we are proposing to remove the required amendment.

We note that, in its letter, the Bureau did not specify whether it was approving Pennsylvania's regulations on a site-by-site or a program wide basis, as required in 30 CFR 938.16(fff). However, in its January 30, 2002, letter to us, the State pointed out that "[c]onsultation with the Pennsylvania Bureau of Forestry occurred on a program wide basis during development of the primacy regulations in the early 1980s. In addition, the configuration and species composition for reclaiming forest land is reviewed and approved on a permit-by-permit basis by foresters in the District Mining Office."

Finally, the Bureau noted in its approval that "[w]hile we approve of the regulations as written, we would like to point out that they could be improved with language that promotes the use of native species when practical, and to *not* use the invasive species on [Department of Conservation and Natural Resources] list of invasive species." (emphasis in original). We, too, encourage the use of native species, when practical, and discourage the use of invasive species. However, because the Bureau's suggestion is not a contingency on its approval, we are proposing to remove the required amendment.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA-142-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782-4036.

#### *Availability of Comment*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on June 18, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public

hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### IV. 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 (OMB) 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. Section 503(a)(7) requires that State programs contain rules and

regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule applies only to the Pennsylvania program and therefore does not affect tribal programs.

##### *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 governmental 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: May 27, 2003.

##### **Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

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