public housing agency (PHA) for purchase under the Housing Choice Voucher Program homeownership option. The amendatory instruction in the final rule contained a technical error. The document makes the necessary correction.

DATES: *Effective Date:* The effective date for the September 17, 2003, final rule is unchanged. The final rule will take effect on October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

■ The final rule FR Doc. 03–23636, published on September 17, 2003, (68 FR 54335) is corrected as follows:

■ On page 54336, in the second column, correct the amendatory instruction to read as follows:

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 982 of title 24 of the Code of Federal Regulations, published on October 28, 2002, 67 FR 65864, as corrected on November 6, 2002, 67 FR 67522, is promulgated as final, without change.

Dated: October 1, 2003.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 03–25325 Filed 10–6–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–144–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule.

SUMMARY: We are removing 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 amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that Pennsylvania's Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the alternative bonding system requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. In response to the amendment, Pennsylvania submitted information to us describing existing and planned changes and enhancements to its bonding program that we have found satisfactorily address the amendment's requirements.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036, e-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

The required amendment we are removing as a result of this rulemaking is codified at 30 CFR 938.16(h). We required the amendment in a May 31, 1991, final rule (56 FR 24687) (1991 rulemaking). By letter dated June 5, 2003 (Administrative Record No. PA 802.27), Pennsylvania sent us a document entitled, ''Pennsylvania Bonding System Program Enhancements'' (program enhancements document). The letter was sent in response to the October 1, 1991, notice sent to Pennsylvania under 30 CFR 732.17(c) through (e) (1991 notice). In a second letter, also dated June 5, 2003 (Administrative Record No. PA 802.28), Pennsylvania stated that the material submitted with the first letter also addresses the first part of the 1991 rulemaking dealing with its alternative bonding system (ABS). The second letter also clarified that bonding for the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim, are handled by conventional bonds and are not, and have not been, a part of the alternative bonding program at issue in the first part of the 1991 rulemaking. This later information was intended to address the remainder of the 1991 rulemaking. In a letter to Pennsylvania dated June 12, 2003 (Administrative Record No. PA 802.29), we found the actions taken, as described in the attachment to the first letter, were sufficient to resolve our 1991 notice. Therefore, we terminated that notice, which addressed deficiencies in the Pennsylvania ABS. We found the letters were also responsive to the required program amendment at 30 CFR 938.16(h) and proposed removing that provision codified in the 1991 rulemaking.

We announced our proposal to remove the required amendment in the June 26, 2003, **Federal Register** (68 FR 37987). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on removing the required amendment. We did not hold a public hearing because no one requested one. We received a request for a public meeting, but it was withdrawn before the meeting was held. The public comment period ended on July 28, 2003. We received comments from two Federal agencies (the United States Environmental Protection Agency, Region III, and the United States Department of Labor, Mine Safety and Health Administration's (MSHA) New

Stanton and Wilkes-Barre Offices). We also received comments from Citizens for Pennsylvania's Future (PennFuture) and the Pennsylvania Coal Association (PCA).

III. OSM's Findings

Following are the findings we made concerning removing the required amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are removing the required amendment at 30 CFR 938.16(h).

As we noted in our proposed rulemaking concerning removal of 30 CFR 938.16(h), our oversight activities had determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation. In addition, our oversight determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites. In the 1991 notice, we notified Pennsylvania of these deficiencies. In the course of approving a proposed program amendment to the Pennsylvania regulatory program in the 1991 rulemaking, we imposed the required amendment codified at 30 CFR 938.16(h). That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee will assure that its Surface Mining Conservation and Reclamation Fund (Fund) can be operated in a manner that will meet the ABS requirements contained in the Federal regulations. In addition, the amendment required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. The 1991 notice stated that Pennsylvania's ABS was no longer in conformance with Federal requirements and mandated that Pennsylvania propose amendments or descriptions of amendments to address the identified deficiencies. Thus, the 1991 notice addressed the same issue covered by the 1991 rulemaking.

In the June 5, 2003, letter the Pennsylvania Department of Environmental Protection (PADEP) responded to the deficiencies noted in our 1991 notice by sending us the program enhancements document. This document, jointly prepared by OSM and PADEP, explains steps that Pennsylvania has taken, and plans to take, to assure appropriate bonding for both land reclamation and postmining discharge treatment on existing active/inactive permits and forfeited sites. In our June 12, 2003, letter to PADEP, we indicated that the actions taken by Pennsylvania, as described in its June 5, 2003, letter, were sufficient to resolve the 1991 notice. Because we have completed our administrative decision terminating the 1991 notice as a separate and distinct action not subject to the public notice and review procedures governing this rulemaking, we will not respond to comments on terminating that action in this rulemaking.

The purpose of our June 26, 2003, proposed rule was to seek public comment on whether Pennsylvania's actions taken in response to the 1991 notice were sufficient to remove the required amendment at 30 CFR 938.16(h) imposed in the 1991 rulemaking. In that rulemaking, we required the amendment as a result of our review of changes Pennsylvania made to its program at 25 Pa. Code 86.17 which describes Pennsylvania's permit and reclamation fees. In the 1991 rulemaking, we indicated that the proposed revisions raised questions concerning the ability of Pennsylvania's ABS to meet the requirements of 30 CFR 800.11(e) (56 FR at 24689). We also required information from Pennsylvania that would demonstrate that the revenues generated by the collection of the reclamation fee are sufficient.

The requirement was generated because of our uncertainty that the Fund could be operated in a manner that will meet the ABS requirements of 30 CFR 800.11(e). Our uncertainty resulted from information Pennsylvania reported that an analysis of the solvency of the Fund for 1989 and 1990 showed a deficit in both years. In addition, our review of proposed revisions to 25 Pa. Code 86.17 left questions as to the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. We were uncertain about the relationship of the ABS and fees collected under 25 Pa. Code 86.17 to the reclamation of underground mining permits where bonds were forfeited.

The June 5, 2003, PADEP submission provides a complete description of ongoing and planned activities that address the issues that formed the basis for 30 CFR 938.16(h). Those activities include: (1) The appropriation of $5.5 million for land reclamation, (2) Continued collection of the permit fee at 25 Pa. Code 86.17(e), (3) Requiring new permits to post conventional bonds and requiring existing active/inactive permits to replace ABS coverage with conventional bonds, and (4) The targeting of significant resources through a number of financial, and reclamation mechanisms at discharges on current primacy forfeitures covered by the ABS.

After careful consideration of the comments we received, we have found that the actions taken, as described in the June 5, 2003, submission, including Pennsylvania's shift from an ABS to conventional bonds, adequately address the requirements of 30 CFR 938.16(h). Pennsylvania's conversion from the ABS to full cost bonding, renders moot that portion of the required amendment concerned with the solvency of the Fund. Also, the clarification that bonding for the surface effects of underground mining has not been a part of the Fund and has been (and will continue to be) handled by conventional bonds is sufficient to address the remainder of the required amendment. Therefore, 30 CFR 938.16(h) is being removed.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. PA 802.31), and received responses from PennFuture and PCA. We will first discuss the PennFuture comments and then the comments from PCA.

At the outset, however, we wish to clarify the scope of the subject matter for which we requested comments, particularly as it relates to satisfaction of the first portion of the 1991 rulemaking. In the June 26, 2003, **Federal Register** Notice announcing our intention to consider the removal of the required amendment at 30 CFR 938.16(h), we noted that the 1991 notice ''dealt with the same subject matter, *i.e.*, the solvency of the State's Surface Mining Conservation and Reclamation Fund, as does the first portion of * * * 30 CFR 938.16(h).'' We stated further that:

> Since we are now satisfied that the State's bonding program enhancements adequately address our concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, we are proposing the removal of the first portion of 30 CFR 938.16(h). 68 FR at 37988.

We then clarified the scope of the opportunity to comment as follows:

> We are seeking your comments on whether OSM should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). Because we decided on June 12, 2003, that PADEP's bonding program enhancements satisfy the concerns expressed in our October 1, 1991, Part 732 Notification Letter, we are not seeking comments on the

adequacy of those bonding program enhancements.

As such, we were effectively asking for comment as to the validity of the proposition that the first portion of the required amendment and the 1991 notice were one and the same and that, therefore, there was nothing more needed from Pennsylvania to satisfy 30 CFR 938.16(h). This question, we believe, is markedly different from the question, not open for comment, of whether actions taken as described in the program enhancements document satisfied the 1991 notice on deficiencies in the ABS.

Nevertheless, we recognize that the June 26, 2003, **Federal Register** Notice may not have presented the scope of proposed action upon which comment was invited with optimal clarity and that, as a result, members of the public may have reasonably believed that they were invited to comment not only on whether resolution of the 1991 Notice also resolved the first part of 30 CFR 938.16(h), but also on the sufficiency of actions described in the program enhancements document to address the deficiencies in the ABS, and, further, on the adequacy of Pennsylvania's bonding program as a whole. For this reason, we are addressing their comments on these latter two issues. However, we continue to maintain that they are outside the scope of this rulemaking.

The PennFuture comments dated July 28, 2003 (Administrative Record No. PA 802.36), were made on behalf of the Pennsylvania Federation of Sportsmen's Clubs, Inc., the Pennsylvania Chapter of the Sierra Club, Pennsylvania Trout, Inc., Tri-State Citizens Mining Network, Inc., and Mountain Watershed Association, Inc.

On July 25, 2003 (Administrative Record No. PA 802.35), PennFuture wrote us concerning our termination of the 1991 notice. PennFuture has requested that we incorporate the comments of its July 25 letter into the comments on removal of 30 CFR 938.16(h). We will consider those comments to the extent that they address the removal of 30 CFR 938.16(h). However, comments that pertain to whether the June 5, 2003, submission satisfies the 1991 notice and comments on the 30 CFR 732.17(c) through (e) process are considered as non-responsive to this rulemaking.

PennFuture commented that OSM is refusing to hear from the public on the adequacy of the June 5, 2003, PADEP submission of the program enhancements document and that in doing so, OSM has violated the public's right to a meaningful ''opportunity to participate'' in this proceeding, as required by 5 U.S.C. 553(c). It claims this also violates our obligation to ''consider all relevant information'' in making our decision as required by 30 CFR 732.17(h)(7).

We disagree that we have violated the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h). We have provided the public a meaningful opportunity to participate in this rulemaking and have considered all relevant information in making our decision on the proposal to remove the required amendment at 30 CFR 938.16(h). Our June 26, 2003, proposed rule specifically identified that the proposal to remove 30 CFR 938.16(h) is based upon the information contained in the June 5, 2003, PADEP submission that was submitted in response to our 1991 notice. In addition, the proposed rule specifically requested comments on whether we should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h).

The June 12, 2003, administrative decision by OSM with regard to the satisfaction of the 1991 notice was a separate and distinct action not subject to the public notice and review procedures governing this rulemaking. To assist the public in commenting, OSM decided that it was appropriate to clarify in this rulemaking that it will consider comments to the extent that they address the satisfaction of 30 CFR 938.16(h) and that comments that address the 1991 notice will be considered as non-responsive to this rulemaking.

PennFuture commented that our pre-rulemaking commitment to finding that the program enhancements are adequate violate the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h) and is violating our obligation to serve as a fully informed, impartial decision maker.

We disagree with the comment's presumption that our involvement with the program enhancements document has violated the notice and comment requirements of 5 U.S.C. 553(c) and 30 CFR 732.17(h) or that it compromises our role as a decision maker. Interaction of our staff with State regulatory authorities in the administration of their programs or in the development of State policies and procedures and State program amendments is a routine practice. That interaction does not alter the fact that once material is submitted to us for consideration and a regulatory action is proposed in the **Federal Register**, as was done in this case, any final decision will be based upon the merits after full consideration of the public comments, including any information provided, on that proposal.

PennFuture commented that because OSM's proposed deletion of the actuarial study requirement from 30 CFR 938.16(h) is entirely dependent on this finding that the program enhancements are adequate, it would seem indisputable that comments or data contesting its adequacy constitute relevant information for OSM to consider under 30 CFR 732.17(h)(7). PennFuture further stated that the notice of proposed rulemaking prevents such information and that OSM will not consider comments on the adequacy of the bonding program enhancements document.

PennFuture has mischaracterized the commenting opportunities provided by this rulemaking. As discussed in response to previous comments, the notice initiating this rulemaking activity specifically identified that the proposal to remove 30 CFR 938.16(h) is based upon the information contained in the June 5, 2003, PADEP submission that addressed our 1991 notice. In addition, the notice specifically requested comments on whether we should consider the information submitted by Pennsylvania sufficient to satisfy the required amendment at 30 CFR 938.16(h). While comments addressing the basis for OSM's administrative decision that the 1991 notice has been resolved are not part of this rulemaking, OSM is considering comments to the extent that they address the satisfaction of the requirements at 30 CFR 938.16(h).

PennFuture has suggested that OSM has firmly committed itself to the positions that the program enhancements are adequate and that the actuarial study requirement of 30 CFR 938.16(h) therefore may be terminated. PennFuture stated that agencies engaged in rulemaking or similar decisions that are subject to notice and comment procedures may not foreordain the results by agreement. Additionally PennFuture stated that OSM must treat the adequacy of the ''program enhancements'' as an open issue that it can decide only after inviting public comment on the issue and giving due consideration to the input in receives. Finally, PennFuture stated that OSM therefore should publish a new notice of proposed rulemaking, expressly invite comment on the adequacy of the program enhancements to address the concerns about the ability of the bonding program to ensure the completion of the reclamation plans for all operations on which the operators default on their obligations to reclaim, and then make its decision whether to delete the actuarial study requirement

from 30 CFR 938.16(h) only after it appropriately considers all relevant information it receives.

We disagree with the comments. The results of this rulemaking were not foreordained by agreement. The fact that OSM staff worked with PADEP staff in developing the program enhancements document does not constitute a binding agreement on OSM as it relates to this rulemaking. As provided for under 30 CFR.732.17(c) through (e), OSM has separately exercised its decision-making authority to review actions taken by PADEP to address the issues identified in the 1991 notice and concluded that the 1991 notice has been resolved. There is no requirement for public notice before revising or terminating such notices and the basis for our June 12, 2003, decision terminating the 1991 notice is beyond the scope of this rulemaking. Separately, we published a proposed rulemaking to obtain public input on whether the information submitted by Pennsylvania in the June 5, 2003, PADEP submission provides sufficient basis for the removal of the requirements at 30 CFR 938.16(h). We are now making our final decision after reviewing all responsive comments. Therefore, further public participation in this decision is not warranted.

PennFuture requested that OSM publish a new notice that completely explains why it believes the program enhancements have been adequately addressed.

Again, we have decided not to adopt the suggestion to publish a new notice with revised discussions of how the program enhancements document addresses the requirements at 30 CFR 938.16(h). The notice of proposed rulemaking for this action provides a complete description of the events leading up to the requirements imposed at 30 CFR 938.16(h). The notice also provides a summary of the activities proposed and undertaken by PADEP that potentially satisfy the outstanding issues as well as a listing of the specific documents that form the basis for our proposal. Because it was not reasonable or practical for us to publish the voluminous documents in the **Federal Register**, we made these documents available to the public in both paper and electronic form upon request. In addition, we offered the opportunity for a public hearing where interested persons could seek clarification of any points needed to facilitate their ability to provide meaningful comment. We believe that the **Federal Register** notice, the information we made available to the public, and the opportunity for a public hearing provided sufficient information to persons interested in commenting on the notice of proposed rulemaking. Further, PennFuture's extensive comments on this rulemaking exhibit an extensive review of the basis for proposing removal of 30 CFR 938.16(h).

PennFuture commented that PADEP has failed to provide the hard proof of financial soundness and sufficient reclamation performance required by 30 CFR 938.16(h) and that until PADEP submits an actuarial study or similar analysis showing that its bonding program actually guarantees complete reclamation of all permanent program sites, the first requirement of 30 CFR 938.16(h) will remain unresolved and therefore must remain in place.

We disagree with the comment, which misstates the scope of the required amendment. The scope of 30 CFR 938.16(h) was limited to deficiencies in the ABS. PADEP has terminated reliance upon the ABS for its regulatory program and demonstrated that the ABS did not play a role in bonding for the surface effects of underground mining. As such, the Pennsylvania regulatory program now operates consistent with 30 CFR 800.11(a) through (d) rather than under (e) as was cited in the required amendment. While there are residual issues in the transition from the ABS to conventional bonds, they are adequately addressed in the program enhancements document.

PennFuture commented that the fundamental reason PADEP still is unable to submit an actuarial study or similar information demonstrating the solvency of its bonding program is that the program remains insolvent and unable to guarantee treatment of all the post-mining discharges emanating from permanent program sites. PennFuture also indicated that in order to demonstrate the ''soundness or financial solvency'' of its bonding program, PADEP first would have to make its bonding program fiscally sound.

Again, the comment misstates the scope of the required amendment, which is limited to the ABS. In the case of a State operated ABS, the State's obligation to expend funds to reclaim a forfeited site extends to all assets of the ABS unless the scope of reclamation covered by the ABS is expressly limited. Where it is determined that an ABS lacks sufficient assets to cover the full cost of reclamation for which it is applicable, as was the case with Pennsylvania in the required amendment, the State must take steps to sufficiently increase the assets of the ABS to cover existing and reasonably anticipated obligations. Efforts to fix an ABS are evaluated on their ability to make the ABS solvent. However, a State always has the option to terminate use of its ABS and require conventional bonds to replace ABS coverage. In doing so, a State does not have an obligation to make its ABS solvent before converting to a conventional bonding system (CBS) and requiring applicants to post conventional bonds and existing permittees to replace ABS coverage with conventional bonds. Such a requirement would be well beyond what is required of a CBS under 30 CFR part 800 where posted bonds are deficient or insolvent, as well as beyond anything OSM would be able to require should it withdraw approval of a State program because of an inadequate ABS. In the case of Pennsylvania, which initiated this process in 2001, terminating reliance upon the ABS and requiring all applicants and permittees to shift to conventional bonds did not require a program amendment because the program already included a CBS, which was being applied to underground mines.

PennFuture commented that the ABS Bond Forfeiture Discharge Workplan (Workplan) and the program enhancements document attempt to balance the books not by expanding the assets of the ABS to match the long-term treatment costs it must cover, but by attempting to write off many of those liabilities, and perhaps all of them.

We disagree with the comment. We can find no provisions in the Workplan where PADEP proposes to ''write-off'' primacy discharges forfeited under the Pennsylvania ABS. To the contrary, the Workplan provides for continued revenue to the Fund; precludes the addition of any more potential liabilities to the Fund by halting its use for new permits; reduces potential obligations to the Fund by requiring the replacement of ABS coverage with conventional bonds or other financial guarantees at existing permits; and provides a structured approach to achieving reclamation of pollutional discharges by targeting significant resources through a variety of financial and reclamation mechanisms at current primacy forfeitures which fall under the ABS. Any initiative to eliminate the revenue to the fund would be an amendment to the program, which could not be implemented without going through the program amendment process, including opportunity for public comment.

PennFuture commented that until PADEP has actually implemented all of its ''program enhancements'' and actually shown that they achieve the objectives applicable to all SMCRA bonding programs, it cannot satisfy the first requirement of 30 CFR 938.16(h) to ''demonstrate'' the adequacy and

solvency of its bonding program. PennFuture further stated that because the program enhancements document does not (and cannot) provide that proof, OSM must leave the first requirement of 30 CFR 938.16(h) in place, and must institute Part 733 proceedings based on PADEP's failure to satisfy it.

Again, the comment misstates the scope of the required amendment, which is limited to the ABS. In fact, if we were to accept the comment and initiate a Part 733 action and ultimately take over all or a portion of Pennsylvania's approved program or substitute a Federal Program, we couldn't begin to address the problems caused by the deficiencies in the ABS as well as the program enhancements document does. PADEP has provided a credible approach to addressing outstanding bond program reclamation responsibilities and OSM has concluded that the required amendment at 30 CFR 938.16(h) is satisfied. Therefore, OSM has no basis for initiating proceedings under 30 CFR part 733.

PennFuture raised questions on PADEP's June 5, 2003, letter regarding the payment of reclamation fees by underground mine operators.

The 1991 rulemaking at 30 CFR 938.16(h) required Pennsylvania to clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim. OSM imposed the requirement to clarify bonding forfeiture funding procedures and the responsibilities of the ABS. Bond program shortfalls have been documented by the 1993 Milliman & Robertson actuarial study and the February 2000 PADEP Assessment Report. Because PADEP has clarified that it has not been relying on the ABS for bond coverage for the surface effects of underground mines that portion of the required amendment has been satisfied.

PennFuture commented that statements that underground mines are bonded under a CBS is erroneous because, lacking a mandatory site-specific bond adjustment provision, Pennsylvania's approved program has never included a conventional SMCRA bonding system.

We do not agree with this comment. The fact that Pennsylvania did not have a mandatory adjustment provision does not alter the fact that, under its approved program, it had been accepting conventional bonds as providing full bond coverage, separate from the ABS, for the surface effects of underground mines. We agree that Pennsylvania needs to modify its program to include a mandatory bond adjustment provision. However, imposing such a required amendment is beyond the scope of 30 CFR 938.16(h). In any case, a commitment to propose such an amendment was included in the program enhancement document. In fact, the proposed amendment has now been received by OSM and we have published it for comment in a separate FR notice.

PennFuture commented that because the authorization in 25 Pa. Code 86.17(e) to use reclamation fees on all bond forfeiture sites is part of the OSM-approved State regulatory program, PADEP may not deviate from the terms of that program through an unwritten policy or a mere letter to OSM. PennFuture asserted that the plain terms of the permit fee regulation at 25 Pa. Code 86.17(b), approved at primacy, required payment of the $50 per acre fee by everyone planning to engage in surface mining activities (a term that included surface activities associated with an underground mining operation). That provision was deleted in 1991 and replaced with 25 Pa. Code 86.17(e), which expressly exempts underground operators from the permit fee requirement, but does not expressly prohibit the use of fee moneys to reclaim surface effects of underground mining. PennFuture further stated that if PADEP wants to place such a restriction on the use of the funds, the only way it can do so is through a program amendment. PennFuture believes that the explanation presented in PADEP's June 5, 2003, letter does not resolve, but rather highlights, an inconsistency between the terms of the approved Pennsylvania program and its implementation and that the inconsistency can be ''clarified'' in only one of two ways: (1) PADEP's elimination of the unpromulgated and unapproved restriction on the use of the ABS reclamation fees, or (2) PADEP's submission and our approval of a program amendment incorporating the restriction that PADEP claims to apply in practice.

We do not agree with PennFuture's assertion that 25 Pa. Code 86.17(b) prevented PADEP from establishing and operating within the boundaries of the Pennsylvania ABS. Pennsylvania's regulation at 25 Pa. Code 86.17(b) provided the authority to collect a permit application fee. When Pennsylvania deleted subsection (b) and added subsection (e) in 1990, it stated that ''[s]ection 86.17 is changed to *clarify* that the $50 per acre reclamation fee does not apply to the surface effects of underground mining.'' Volume 18, *Pennsylvania Bulletin,* 3385, June 16, 1990. (Emphasis added) Since the 1990 changes ''clarified,'' rather than ''created,'' the reclamation fee exemption for underground operators, PADEP's June 5, 2003 assertion that ''[b]onding of surface impacts of underground mines has always been under a conventional bonding system'' is consistent with previously approved and currently approved regulations. The discretionary authority under 25 Pa. Code 86.152 and 86.149(b)(7) provided PADEP with the option of adjusting bonds on sites it determined were covered by the ABS. In addition, there were no program restrictions preventing PADEP from allocating the reclamation fees collected to those sites where bonds were adjusted pursuant to the discretionary authority. The required amendment at 30 CFR 938.16(h) requested that Pennsylvania clarify its existing procedures with regard to that process. PADEP has done so, by stating in its June 5, 2003, letter that underground mines are not subject to the reclamation fee, and that the ABS moneys are not used for reclaiming underground mines. We believe these statements are legally supported by the flexible language contained in the State's regulations at 25 Pa. Code 86.17 and 86.152. Moreover, and as stated above, PADEP is now requiring all mine permits to post a full cost reclamation bond and PADEP has proposed a number of enhancements, as well as an amendment making it clear that bond adjustment will be mandatory when adjustment is needed.

PennFuture commented that the PADEP technical guidance document that remains in effect provides that the mine drainage treatment component for an underground anthracite (*see* PADEP Technical Guidance Document No. 563–2504–45 1, ''Bonding: Anthracite Underground Mines'' (February 15, 1997)) is limited to the cost of replacing the treatment system.

We appreciate the commenter pointing out that Pennsylvania's 1997 guidance document is not consistent with our 1997 acid mine drainage (AMD) policy statement issued shortly after their guidance document (while the Pennsylvania guidance document reflects Federal bonding requirements for underground mines promulgated in 1980, those requirements were simplified with that express provision limiting bonding to the cost of removing or replacing the treatment system being removed in 1983). However, that inappropriate limitation in the guidance document is not germane to the requirements of 30 CFR 938.16(h) nor

our basis for proposing to remove it. Therefore, the comment is outside the scope of this action.

PennFuture indicated that the program enhancements document suggests that PADEP will include long term treatment costs in calculating the water treatment component of conventional bonds, but the formula it provides (in Appendix 1) incongruously does not take into account the costs of replacing the treatment system.

First, the approach to calculating costs for conventional bonds is outside the scope of the 1991 rulemaking codified at 30 CFR 938.16(h) and our basis for proposing to remove it. In any case, we have found that PADEP's approach to calculating the annual treatment cost includes a component for recapitalization. Our technical staff has been working with PADEP on refining treatment cost calculations and confirms that the cost of reconstructing the discharge treatment system is included. Please note that PADEP plans to address this issue through a specific guidance document that will be open to public comment. We encourage you to contact PADEP and notify them of your interest to review and comment on new and revised technical guidance documents.

PennFuture commented that the method for calculating the bond for an underground mine can be ''clarified'' once and for all only if it is part of the OSM-approved, OSM-enforceable State regulatory program.

Underground bond calculation procedures are part of the approved program. Consistent with Federal regulatory programs, States may implement bonding calculations and bond rates through agency guidelines. Pennsylvania maintains bond rate guidelines through its Technical Guidance Document system. We have generally not required the submission of those guidance documents as program amendments nor would we expect to unless they seemed to conflict with the approved program. In any case, the method for calculating the bond amount for conventional bonds required to be posted for the surface effects of underground mines is beyond the scope of this rulemaking which, as previously explained, is limited to the ABS.

PennFuture commented that PADEP's June 5, 2003, submission does not satisfy the first requirement of 30 CFR 938.16(h) to demonstrate that Pennsylvania's bonding program guarantees timely and complete reclamation of all bond forfeiture sites. PADEP has not submitted such proof, and the unfolding situation with C&K Coal Company shows that it is unable to do so.

Please review our responses to a number of similar comments above. PADEP's June 5, 2003, submission does satisfy the requirements of 30 CFR 938.16(h). In addition, PADEP has provided a credible approach to addressing residual reclamation obligations covered by the ABS. These include the provision of $5.5 million for land reclamation, the conversion of active mine permits to full cost bonding, and the development of a long-term treatment approach to pollutional discharges on active and forfeited mine sites. Forfeiture situations such as those presented by C&K Coal Company are unfortunate and are representative of the types of challenges that PADEP faces as it addresses those residual obligations. We have committed to a cooperative partnership with PADEP that will target the resources of both agencies towards the implementation of the bond program enhancements put forth by PADEP under the program enhancements document. We are confident that the shift from the ABS to conventional bonds (which brings the Pennsylvania program into conformance with Federal requirements) together with ongoing and planned enhancements to address the residual ABS obligations, constitutes the best approach to resolving residual obligations of the ABS such as the one referenced in the comment.

PennFuture commented that we should allow the required program amendment codified at 30 CFR 938.16(h) to remain in place, and should now institute the Parp 733 proceedings we should have initiated in early 1992 based on PADEP's failure to satisfy the two requirements codified therein.

Please see our response above to similar comments. The required amendment at 30 CFR 938.16(h) has been satisfied and we have no basis for initiating proceedings under 30 CFR part 733.

The following comments from PennFuture are derived from its letter to us dated July 25, 2003, regarding our action in terminating the 1991 notice. As we noted above, we are identifying and responding to these comments only to the extent that they arguably apply to removal of the required amendment at 30 CFR 938.16(h) and have not already been addressed above.

PennFuture stated that OSM has flip-flopped from its previous insistence that all forfeiture discharges receive timely treatment.

We do not agree with this comment. We have consistently required, in Pennsylvania as well as other states, that any ABS must have sufficient assets to complete the reclamation plan of all sites covered by the ABS. We have consistently judged efforts to correct identified deficiencies in an ABS by that same standard. However, this is the first time we have faced a situation in which a State has decided to replace ABS bond coverage for new and existing permits with conventional bonds rather than trying to fix a deficient ABS and continue reliance upon it. Again, when the bond coverage being provided to operations as part of an approved program under 30 CFR 800.11(e) is determined to be insufficient, it is appropriate to require replacement of that bond coverage with a conventional bond posted under 30 CFR 800.11(a) through (d). That is what OSM would do if we were to institute a Federal bonding program in Pennsylvania or any other State with an ABS. However, there is no obligation to make the bond coverage under subsection (e) solvent before doing so. That does not mean that the obligation to treat forfeiture discharges goes away. That obligation remains first with the permittee. Second, it resides with the bond coverage to the extent funds are available. However, Pennsylvania, or any other State, is only obligated to treat forfeiture discharges to the extent bond funds are available.

PennFuture stated that by using a watershed approach to address primacy forfeiture discharges, OSM is attempting to hide the failure of PADEP and OSM to ensure full implementation of the reclamation plan for every primacy forfeiture site.

We do not believe this comment is within the scope of this rulemaking. However, we will respond. We support PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. Given the range of State and Federal government programs and citizen based mine drainage treatment efforts ongoing in Pennsylvania, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, scarce programmatic and technical resources could be wasted. SMCRA and the 30 CFR part 800 bonding regulations do not prohibit the regulatory authority from implementing discharge abatement activities in the context of an entire watershed.

PennFuture stated that it will take years for the agencies to perform all the studies, calculate all the wasteload allocations, create the priority lists, evaluate the available funding and other mechanisms, and confront the hard decisions to formally abandon certain

primacy discharges. PennFuture stated that in the meantime, the primacy forfeiture discharges will continue to flow without treatment, and the list of them will grow longer.

While we do not believe it is within the scope of this rulemaking, we agree with the comment that collecting the appropriate scientific information and developing effective abatement plans may require a considerable amount of time. However, PADEP and we have committed to a joint agency cooperative approach to developing watershed plans that will successfully abate forfeiture discharges. We acknowledge that until such time as a discharge abatement plan becomes effective, certain discharges may go untreated.

PennFuture commented that the program enhancements document fails to show that sufficient financial guarantees have been or will be posted for active and inactive discharge sites to prevent the discharges from going untreated after forfeiture occurs.

Again, while we believe this comment is outside the scope of this rulemaking, we will respond. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources in the development of a workable trust approach. For the long-term, PADEP has committed a process where operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to have the operator commit to building a financial assurance (trust) over a specified period of time. PADEP's approach is within their approved statutory and regulatory requirements and will take some time to be fully implemented. We agree that it is possible that certain sites may forfeit their bonds leaving insufficient funds for the immediate treatment of any pollutional discharges. In such cases, PADEP has committed to addressing the sites as part of their watershed approach under the Workplan.

PennFuture commented that the bond conversion program was a misdirected effort because instead of focusing on the major problem of mine drainage treatment guarantees, PADEP conducted a multi-year effort to revamp parts of its program for guaranteeing land reclamation, which consumed considerable resources of both mine operators and PADEP staff.

We do not agree with the comment. PADEP's plan for converting existing operations from the ABS to conventional bonds was designed to maximize the number of sites obtaining conventional bonds and minimize the number of forfeitures that might be triggered by the conversion process. It also addresses the water treatment component in a manner consistent with OSM's 1997 AMD policy statement as applied under programs with conventional bonds.

PennFuture submitted a list of activities ongoing in the Pennsylvania regulatory program, in support of a contention that Pennsylvania's transition to a CBS is not complete. PennFuture commented that based upon the submitted reasons, Pennsylvania is still operating an ABS.

We acknowledge that the Fund still exists. However, with regard to the comment and its relevance to the removal of the required amendment at 30 CFR 938.16(h), we note that PADEP, rather than continuing efforts to make the ABS solvent, is now requiring all mine permits to post a full cost reclamation bond. We also acknowledge that, through implementation of the workplan described in the enhancements document, PADEP is continuing efforts to further reduce the residual potential obligations to the Fund by obtaining other forms of financial guarantees for those potential obligations where possible. However, that does not alter the fact that the required actions described in 30 CFR 938.16(h) are now moot because Pennsylvania chose a different course to address the issues raised.

PennFuture commented that the Workplan is inconsistent with SMCRA because it allows primacy discharges to be lumped with all other post mining discharges under a prioritized reclamation approach. That process, PennFuture contends, is inconsistent with SMCRA. PennFuture further stated that, under SMCRA, primacy sites are legally distinctive and are not supposed to be thrown in with every other abandoned coal mine in the State and that the Workplan explicitly allows for primacy forfeiture discharges to go without treatment based on the unavailability of funds, and it effectively writes off some primacy discharges permanently because they fall below the treatment threshold on the priority list.

We do not agree that the Workplan is inconsistent with SMCRA. As we have stated in a previous decision on a Pennsylvania bonding amendment, SMCRA does not prevent regulatory authorities from prioritizing reclamation efforts to effectively allocate staff resources or to improve the environmental outcome of program operations. *See* 56 FR 55080, 55084 (October 24, 1991) (''To the extent that [State programs] provide only for a ranking of sites for reclamation without compromising the requirement that all sites for which bonds were posted be properly reclaimed, however, they are not inconsistent with * * * SMCRA * * *'') Likewise, there are no provisions under SMCRA or the 30 CFR part 800 bonding regulations that prevent the regulatory authority implementing discharge abatement activities in the context of an entire watershed. OSM supports PADEP's approach to address all mine drainage problems in the Commonwealth, including those from primacy forfeitures, on a watershed basis. As we noted above, PADEP must carefully consider each primacy forfeiture discharge in the context of all pollution in the watershed. Without such an approach, programmatic and technical resources could be wasted. We disagree that the discharge Workplan would allow PADEP to ''write-off'' sites based upon a treatment threshold established on a priority list. We expect that some discharges will be addressed under abatement plans where treatment may not be at the specific discharge location or may be carried out in combination with non-primacy forfeiture discharges. However, we anticipate that all primacy forfeiture pollutional discharges will be addressed by PADEP.

PennFuture commented that OSM has previously ruled on the prioritization of bond forfeiture reclamation in the October 24, 1991, **Federal Register** (56 FR 55080), when it stated that ''neither SMCRA nor the Federal regulations provide for prioritizing sites for reclamation, since both presume that site-specific bonds, together with necessary supplemental funding from alternative bonding systems, will be immediately available and adequate to cover reclamation costs for each site.'' 56 FR at 55084.

In response, we note that our October 24, 1991, finding, also stated that prioritization would be inconsistent with SMCRA where it ''would allow high priority sites to be reclaimed while neglecting lower priority sites.'' *Id.* The Workplan calls for reclamation, including water treatment, for all permanent program sites, even though some will have to wait longer than others, and some will be treated on a watershed basis. Neither of these approaches equates to a ''write-off'' of permanent program site reclamation costs.

In support of its previous comment that OSM and PADEP cannot ''write-off'' outstanding obligations of an ABS, PennFuture referenced past OSM decisions in Missouri (56 FR at 21281), Kentucky (57 FR at 37090), and West Virginia (60 FR at 51918) (codifying quoted language at 30 CFR 948.16(lll)).

We do not agree that The Workplan will ''write-off'' primacy forfeiture discharges. The Workplan provides for PADEP to develop and maintain a statewide strategy and to dedicate staff resources expeditiously to address primacy forfeiture discharges. The Workplan also provides for periodic reporting on the status of the discharge inventory, reclamation accomplishments, and to provide us with information on program issues encountered during the process. In addition, the Workplan makes information on the statewide strategy, site-specific abatement plans and abatement schedules available to the public. We have concluded that the development of a statewide strategy and site-specific plans with periodic reporting and public involvement provides a process that will address all primacy forfeiture discharges in a manner that will maximize the environmental benefits on a watershed basis. At the same time, we reiterate an earlier response that pointed out that converting from an ABS that is deficient to conventional bonds is quite distinct from efforts to maintain and correct deficiencies in an ABS, as was done by Missouri, Kentucky and West Virginia. Again, Pennsylvania is not obligated to make its ABS solvent before replacing the ABS with conventional bonds.

PennFuture commented that it disagreed with the discussion in the program enhancements document that dealt with bond program ''liability'' versus ''programmatic accountability.'' PennFuture stated that the document makes no effort to explain the distinction between the State not being ''liable'' for treatment costs on bond forfeiture sites and it having ''programmatic accountability'' to ensure there is sufficient funding available for that purpose.

While this comment is outside the scope of this rulemaking we will clarify the point. Again, the operator remains liable for all unfinished reclamation obligations, including water treatment at a forfeited site. The regulatory authority has an obligation to use forfeited and/or ABS funds to complete the reclamation plan to the extent funds are available. The regulatory authority also has programmatic accountability to assure that there are sufficient funds available. However, failure to fulfill its programmatic responsibility to assure that sufficient funds are available in the event of forfeiture does not make the State liable for completing the reclamation plan.

Penn Future commented that the Workplan wrongly classifies Title V primacy bond forfeiture sites as a subset of ''[t]he universe of abandoned mine lands,'' and that PADEP has decided that discharges from primacy forfeiture sites are properly classified as nonpoint source discharges for TMDL purposes. Penn Future takes issue with the letter from the Environmental Protection Agency dated November 7, 2001, that discusses the use of TMDL's when addressing discharges on abandoned mine sites.

While we believe this comment falls outside the scope of this rule making, we will address it. We disagree with the Penn Future's characterization of the letter with regard to the Workplan. The Workplan does not address whether specific discharges are point or non-point sources. Primacy forfeiture discharges will be addressed by PADEP through a variety of financial and reclamation mechanisms consistent with Pennsylvania's approved Environmental Protection Agency (EPA) water quality program. The Workplan includes a commitment by PADEP to make discharge abatement plans available to the public. At that time, the public will have an opportunity to comment on the treatment of discharges on a site-by-site basis.

Penn Future commented that the Workplan fails to mention any discharges addressed by remining or the ''rec-in-lieu'' program.

While we believe this comment falls outside the scope of this rule making, we will address it. The value of remining efforts in Pennsylvania is well known and OSM and PADEP chose to not devote the considerable space needed to establish the value of the activity. Persons interested in the accomplishments of the remining program in Pennsylvania can visit the EPA website and obtain a copy of the document ''Coal Remining—Best Management Practices Guidance Manual'' (EPA 821–B–01–010). Under Section 6 of that document, there is a considerable amount of information on the water quality accomplishments of remining in Pennsylvania. Both reclamation mechanisms, and particularly remining, present opportunities for PADEP to address primacy forfeiture discharges.

PennFuture commented that PADEP is unable to pledge future use or availability of certain resources as part of the discharge abatement Workplan. PennFuture specifically questioned the availability of Growing Greener grants and the 10% Set-Aside under the SMCRA Abandoned Mine Land Program.

While we believe this comment falls outside the scope of this rulemaking, we will address it. We do not agree with the comment. The Workplan provides for PADEP to develop and maintain a statewide strategy using a number of financial and reclamation resources. Growing Greener Grants and the 10% Set-Aside represent potentially significant resources and have been used to achieve meaningful reclamation in the treatment of post-mining pollutional discharges. While the extent of their contribution will have to be determined on an annual basis, past accomplishments demonstrate their value to the overall Workplan approach to pollution abatement.

PennFuture commented that treatment bonds and trust funds will not prevent future primacy forfeitures. PennFuture stated that although the posting of full-cost water treatment bonds or, as an alternative to those bonds, establishment of treatment trusts may curb the rate of growth of the ABS funding shortfall, they will not prevent that shortfall from expanding or the list of untreated primacy forfeiture discharges from lengthening.

While we believe this comment is outside the scope of this rulemaking, we agree that bonds and trusts funds specifically covering the treatment of pollutional may not be a final solution for every discharge. However, we believe these efforts will significantly reduce the potential shortfall of the ABS. PADEP has invested a great deal of effort in developing a remedy to the inadequacies of the classic bonding approach to long-term discharges. In the short-term, it has used its enforcement and compliance process to initiate a number of treatment trusts on active mine sites. It has invested staff resources to the development of a workable trust approach. For the long-term, PADEP has committed to a process whereby operators will have to put up a separate bond that will provide for long-term treatment in the event of a forfeiture. If operators refuse or are unable to come up with the bond, PADEP will use its enforcement and compliance process to force the operator to commit to building a financial assurance (trust) over a specified period of time. This is an approach PennFuture supported in a request for comments on OSM's Advance Notice of Proposed Rulemaking published in the **Federal Register** on May 17, 2002 regarding AMD bonding issues (67 FR 35070). We

believe that treatment bonds and trust funds will lead to successful treatment of many more discharges than could be successfully treated employing the classic approach to conventional bonding, and will also remove potential obligations to the ABS.

PCA submitted comments on July 28, 2003 (Administrative Record No. PA 802.37). PCA commented that it supported the removal of the required amendment at 30 CFR 938.16(h). However, PCA believed that it was important that the final rulemaking clarify the nature of the removal through four points. We will respond to each point in turn.

In its first point, PCA indicated that it believes that Pennsylvania's proposal for financial assurances at sites with post mining discharges is more detailed and advanced than any proposed Federal regulatory requirements. PCA wanted us to state clearly that Pennsylvania may make changes to its proposed submission and that changes will be subject to public participation.

We acknowledge PCA's support of removal of the required amendment. As we noted earlier, in our proposed rule of June 26, 2003, we requested comments on PADEP's submission of the program enhancements document as it related to removal of the required amendment at 30 CFR 938.16(h). We believe that Pennsylvania has the existing statutory and regulatory authority to implement the provisions discussed in the document. As such, there is no need for the document to be submitted to us for processing as a program amendment under 30 CFR part 732. While Pennsylvania is free to make changes to the document, we will be closely monitoring any such changes to insure that they are based on Pennsylvania's approved program. Any changes that are not based on the approved program will be subject to the program amendment standards of 30 CFR part 732, including public participation.

In its second point, PCA is concerned with Pennsylvania's plans to move ahead with implementing a trust fund system that could put operators at a competitive disadvantage because it is more detailed, comprehensive and rigorous than other states require. PCA is also concerned that the trust fund system could put some operators out of business altogether. PCA requests that PADEP implement a treatment trust fund system that is no more stringent than any Federal program.

We disagree with the premise of the comment. We believe that the steps PADEP is taking are consistent with Federal requirements and, as such, will not put Pennsylvania operators at a competitive disadvantage.

In its third point, PCA indicated that there exists a bonding crisis in the mining industry making it difficult for operators to obtain bonds and it believes that surety bonding will not be available to address postmining discharges. PCA wants us and PADEP to acknowledge the need to review options in light of the bonding crisis and to ensure that our efforts to implement the joint workplan are designed to avoid further worsening of bonding difficulties.

We acknowledge the problems operators have in securing bonds. We believe that the trust fund option described as part of the bonding enhancements document is a valid alternative that will assist operators in their meeting reclamation requirements without adding to the burden of securing conventional bonds. The trust fund provisions will also assist in securing the release of conventional bonds, thus assisting operators to secure conventional bonds for other minesites.

In its fourth and final point, PCA indicated that operators have been treating discharges from minesites for years. Often, these treated discharges are entering streams that are severely degraded which means the treatment has little or no benefit to the hydrologic balance of the receiving watershed. In those cases, PCA indicated that it may not be prudent for PADEP to require operators to post a conventional bond or a trust fund for perpetual treatment.

As previously stated, the operator remains liable for completing the reclamation plan, including water treatment, and the regulatory authority has a programmatic accountability to assure that adequate financial resources are available in the event of bond forfeiture. Therefore, we do not agree with this comment.

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. PA 802.31). On July 3, 2003 (Administrative Record No. PA 802.32), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

On July 16, 2003 (Administrative Record No. PA 802.33), MSHA's New Stanton Office wrote to us indicating that before a mine is abandoned, MSHA requires that all underground mine openings are sealed and refuse piles and impoundments are abandoned according to its requirements at 30 CFR 77.215. MSHA observed that there are many impoundments in Pennsylvania attached to bankrupt mines that have not been abandoned. MSHA noted that the conversion of all active and inactive mining permits to a full cost conventional bond should allow Pennsylvania to reclaim these sites. MSHA concluded by noting that it had no objections to removing the required amendment at 30 CFR 938.16(h).

We agree with MSHA's comments.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 802.31). EPA responded on July 17, 2003 (Administrative Record No. PA 802.34) that it appears that PADEP has provided sufficient information to justify removal of the required amendment at 30 CFR 938.16(h). EPA further indicated that it determined that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under its jurisdiction.

V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(h).

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 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. Pennsylvania does not regulate any Native Tribal lands.

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 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 Pennsylvania 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 Pennsylvania 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 unfounded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2003.

Brent Wahlquist,

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.*

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (h).

[FR Doc. 03–25300 Filed 10–6–03; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 2001–1 CARP DSTRA2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule: technical amendment.

SUMMARY: The Copyright Office of the Library of Congress is making a non-substantive technical amendment to its final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002, through December 31, 2007.

DATES: *Effective Date:* August 4, 2003.

Applicability Date: The regulations apply to the license period January 1, 2002 through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of