• Whether the adoption of the current versions would be controversial; and
• Whether the latest versions reduce risk more than the versions that are currently incorporated in OSHA standards.

Various SDOs and other organizations responded and indicated their desire to assist OSHA in its effort to update its standards. Among the SDOs providing input were ANSI, the National Fire Protection Association (NFPA), the American Society of Mechanical Engineers (ASME), and the American Society for Testing and Materials. Other organizations such as Underwriters Laboratories, the American Petroleum Institute, the Compressed Gas Association, and the Abrasive Wheel Institute also responded. Many of the SDOs and other organizations provided OSHA with copies of the most recent versions of their referenced standard(s) and offered to provide technical assistance to the Agency in its analysis of the older and new standards. OSHA appreciated the willingness of these organizations to help us implement this project.

Nearly all of the SDOs said that OSHA’s standards needed updating to reflect current versions of the consensus standards and that the current versions provided a higher level of safety to workers. In addition, many of the SDOs believe that OSHA’s efforts to update its standards to reflect current versions of the consensus standards will not elicit controversy. For example, the ASME said:

We believe that adoption of the current version of each of these standards by the Federal Government with the changes identified would be non-controversial. Similarly, it is our opinion that the current versions of ASME standards will provide a reduction in the risk of accidents and injuries as compared to earlier versions presently referenced in the CFR and will alleviate some of the confusion in the regulated industry. Moreover, in addition to the technological advances incorporated into updated standards, many of the products described in the older versions of standards are no longer available, or are very difficult to obtain. Ex. 2–2, p. 2.

The NFPA noted that each of their documents has been updated “to reflect up-to-date terminology and current industry practices.” Ex. 2–3, App. B. The updated documents often cover technology that has been developed since the OSHA standard was promulgated. “Providing a state-of-the-art document reflecting business practices of today promotes more of an understanding, appreciation and the much-needed buy-in by the users of the regulations, thereby reducing risk.” Ex. 2–3, App. B.

The NFPA also thought the updated references “would be largely non-controversial since the documents are ANSI consensus standards.” Ex. 2–3, App. B. In addition, the NFPA said that “[w]ith the interested parties participating in the process to write documents, and with the respective affected industries and their insurance companies currently using NFPA documents, there is little controversy with OSHA referencing the most updated NFPA codes and standards.” Ex. 2–3, App. B. The NFPA also said that for those OSHA standards that contain word-for-word text from NFPA codes and standards, OSHA should consider replacing the text “with a simple reference to the applicable primary NFPA document.” Ex. 2–3, App. B.

OSHA is undertaking a series of regulatory projects to update its standards to reflect the current versions of consensus standards. These regulatory projects will include updating or revoking outdated consensus standards incorporated by reference, and updating regulatory text of current OSHA rules that were adopted directly from the language of outdated consensus standards. OSHA will use a variety of regulatory approaches in this effort, including:

1. Notice and comment rulemaking. OSHA intends to initiate formal (notice and comment) rulemaking to update or revoke references to outdated consensus standards in instances where OSHA anticipates that the action would either impose compliance costs or raise significant issues. OSHA will also use traditional notice and comment rulemaking to update OSHA provisions that were derived directly from the text of outdated consensus standards. OSHA is already using this technique to update its electrical installation standards in Subpart S of Part 1910 (proposed rule published April 5, 2004, 69 FR 17774) and expects to publish a proposed rule in the near future for Subpart V (power transmission and distribution lines and equipment) of Part 1926.

2. Direct final rulemaking. OSHA will use direct final rulemaking to update or revoke, as appropriate, references to outdated consensus standards where the regulatory change is non-controversial, equally protective, and does not impose significant new compliance costs.

3. Technical amendments. Where appropriate, OSHA intends to issue technical amendments to update references that are currently incorporated into OSHA standards and that only provide information to the regulated community. Such references impose no compliance obligations and can be updated without notice and comment procedures.

OSHA welcomes comments on this update effort generally, as well as specific suggestions on which projects OSHA should pursue first.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor’s Order 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 17 day of November 2004.

John L. Henshaw,
Assistant Secretary of Labor.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–124–FOR]

Pennsylvania Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We are reopening the public comment period on 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). Since the close of the comment period, Pennsylvania has provided explanatory information in response to two letters, as amended, we sent requesting clarification with regard to its proposed amendment. Pennsylvania has also withdrawn portions of its original amendment and has requested that we consider some existing statutes and regulatory provisions as part of the amendment. Pennsylvania has also indicated its intent to further revise portions of the amendment. We are accepting comments on the specific changes noted below only.

DATES: We will accept written comments on this proposal until 4 p.m., (local time) December 9, 2004.
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 rules and 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 the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

By letter dated December 18, 1998 (Administrative Record No. PA 853.01), the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program pursuant to various issues including bonding, remining and reclamation, postmining discharges, and water supply protection/replacement. The proposal included two documents: "Provisions of Pennsylvania's Statute—Surface Mining Conservation and Reclamation Act—Submitted for Program Amendment" and "Provisions of Pennsylvania's Regulations—Submitted for Program Amendment.


By letters dated September 22, 1999 (Administrative Record No. PA 853.14), and April 6, 2000 (Administrative Record No. PA 853.17), we requested clarification from Pennsylvania on various aspects of its amendment. In an October 3, 2002, letter to Pennsylvania (Administrative Record No. PA 853.22), we indicated that some of the issues in our September 22, 1999, and April 6, 2000, letters were no longer valid and that we were withdrawing our request for clarification of those issues. The conclusions in this letter were the result of our internal deliberations; we did not remove our request for clarification of these issues as the result of information from any other source. Since the issuance of the October 3, 2002, letter, we have had numerous meetings with Pennsylvania to discuss the items remaining from the September 22, 1999, and the April 6, 2000, letters.

The meetings with Pennsylvania resulted in Pennsylvania providing information to us to clarify the meaning of various parts of its amendment. We prepared a document listing those clarifications and placed it in the administrative record (Administrative Record No. PA 853.25). Copies of that document can be obtained from OSM’s Harrisburg Office at the address noted above. The parts of the Pennsylvania Surface Mining and Reclamation Act (PASMCRA) that we received clarifications on include: Sections 4(d); 4(d)(2); 4(g)(1) and (3); 4.2(f)(2) and (3); 4.13; 18(a.1); and 18.9. We received clarifications from Pennsylvania on the following regulations at 25 Pa. Code Chapter 86: Sections 86.151(c); 86.158(e) and (f); 86.168; 86.174(a); 86.252 (definition of remining area); 86.253(b)(2)–(4); and 86.354. Finally, we received clarifications from Pennsylvania on the following portions of 25 Pa. Code Chapter 87: 87.119(d) and (e). We are seeking comment on the clarifications PADEP provided to us of these sections. Additionally, Pennsylvania submitted two letters to us modifying the December 18, 1998, amendment. Those letters were dated December 23, 2003 (Administrative Record No. PA 853.23), and April 13, 2004 (Administrative Record No. PA 853.24).

In the December 23, 2003, letter, Pennsylvania noted that in the 1998 amendment submission it had proposed the removal of certain language in 25 Pa. Code Chapters 87–90 including: Sections 87.102; 87.103; 87.207(b); 88.92; 88.93; 88.187; 88.188; 88.292; 88.293; 88.507(b); 89.52; 89.53; 90.102; and 90.103 which provide effluent limits for discharges from areas disturbed by coal mining activities. In the 1998 amendment, Pennsylvania also requested the definition of the phrase, "dry weather flow". In 25 Pa. Code 87.1, 88.1, 89.5, and 90.1 and the definition of the phrase, "best professional judgment" in Sections 87.202 and
88.502 be removed from the approved program. In the December 23, 2003, letter, Pennsylvania revised the 1998 amendment as submitted to retain, as part of its approved program, the above referenced regulations which provide effluent limits and the definitions of “dry weather flow” and “best professional judgment.” Therefore, we consider those portions of the 1998 amendment submission as withdrawn and they will not be considered further in this rulemaking. No comments will be accepted with regard to these areas.

Also in the December 23, 2003, letter, Pennsylvania indicated that the 1998 program amendment had included Sections 4(g.1), 4(g.2), and 4(g.3) of PASMCR A relating to minimal impact postmining discharges and the release of bonds on mine sites with discharges. Pennsylvania noted in that letter that since the definition of minimal impact postmining discharges and the regulations for postmining discharges were not included in the program amendment, it was requesting that these sections of PASMCR A be removed from the proposed amendment. Pennsylvania noted in the letter that it was intending to submit these sections along with the associated regulations as a separate program amendment. Therefore, these sections are also withdrawn and will not be considered further in this rulemaking. No comments will be accepted with regard to these areas.

In the April 13, 2004, letter, Pennsylvania notified us that it wished to withdraw Section 18(a.4) of PASMCR A from consideration under the 1998 program amendment because the areas suitable for reclamation by remining program has not yet been developed. Therefore, this section will not be considered further in this rulemaking. No comments will be accepted with regard to these areas.

Also in its April 13, 2004, letter, Pennsylvania requested that we consider for approval Sections 4.10 and 4.11 of PASMCR A and the corresponding regulations at 25 Pa. Code Sections 86.251 through 86.270. These sections of the statute and regulations provide for Pennsylvania’s Re mining Operators Assistance Program. This program provides incentives to operators to undertake reclamation and remining of abandoned mine lands and bond forfeiture sites. These provisions are now included in this rulemaking action and we are seeking comment with regard to these sections of PASMCR A and 25 Pa. Code Chapter 86. Therefore, we will not consider any 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 entirety.

List of Subjects in 30 CFR Part 938
Intergovernmental relations, Surface mining, Underground mining.

Brent Wahlquist,
Regional Director, Appalachian Regional Coordinating Center.
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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 180
Trifluralin; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of trifluralin in mint oil under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The amendment substantially rewrote section 408 of FFDCA. As a result, the revisions made it necessary, once again, to establish tolerances on certain commodities, such as mint oils, that had previously been deemed unnecessary.

DATES: Comments must be received on or before January 24, 2005.

ADDRESSES: Submit your comments, identified by docket identification (ID) number OPP–2004–0142, by one of the following methods:
• Federal eRulemaking Portal: http://www.regulations.gov/. Follow the online instructions for submitting comments.
• Agency Website: http://www.epa.gov/edocket/. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.
• E-mail: Comments may be sent by e-mail to opp-docket@epa.gov,