

**List of Subjects in 18 CFR Part 381**

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

**Thomas R. Herlihy,**  
*Executive Director.*

■ In consideration of the foregoing, the Commission amends part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

**PART 381—FEES**

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

**§ 381.302 [Amended]**

■ 2. In 381.302, paragraph (a) is amended by removing “\$19,890” and adding “\$20,940” in its place.

**§ 381.303 [Amended]**

■ 3. In 381.303, paragraph (a) is amended by removing “\$29,040” and adding “\$30,560” in its place.

**§ 381.304 [Amended]**

■ 4. In 381.304, paragraph (a) is amended by removing “\$15,230” and adding “\$16,020” in its place.

**§ 381.305 [Amended]**

■ 5. In 381.305, paragraph (a) is amended by removing “\$5,700” and adding “\$6,000” in its place.

**§ 381.403 [Amended]**

■ 6. Section 381.403 is amended by removing “\$9,900” and adding “\$10,420” in its place.

**§ 381.505 [Amended]**

■ 7. In 381.505, paragraph (a) is amended by removing “\$17,110” and adding “\$18,000” in its place and by removing “\$19,360” and adding “\$20,380” in its place.

**Subpart H of Part 381 [Removed]**

■ 8. Subpart H of part 381 (consisting of § 381.801) is removed.

[FR Doc. E7–7190 Filed 4–16–07; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938**

**[PA–147–FOR]**

**Pennsylvania Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are removing five required amendments to the Pennsylvania regulatory program (the “Pennsylvania program”) regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) related to alternative reclamation plans; alternative postmining land use determinations; and bond forfeiture sites where reclamation is unreasonable, unnecessary, or impossible. Pennsylvania revised its program to be consistent with the corresponding Federal regulations and SMCRA.

We are also approving two of four additional requested changes (not required) to the Pennsylvania program. Pennsylvania revised its program at its own initiative to clarify ambiguities and initiate changes in its fee collection calculations. The two approved changes are in regard to a typographical reference error and the evaluation of bond forfeiture sites. We are deferring our decision on two changes in regard to the discontinuation of a \$100 per acre reclamation fee.

**EFFECTIVE DATE:** April 17, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Pennsylvania Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and

rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania’s program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

**II. Submission of the Amendment**

By letter dated May 23, 2006 the Pennsylvania Department of Environmental Protection (PADEP) sent us an amendment to revise its program regulations at 25 Pennsylvania Code (Administrative Record No. PA 793.11) under SMCRA (30 U.S.C. 1201 *et seq.*).

Pennsylvania sent the amendment in response to five required program amendments codified in the Federal regulations at 30 CFR 938.16 (mm), (nn), (oo), (pp), and (qq), and to include four additional changes made at its own initiative. The required amendments pertain to alternative reclamation plans, alternative post mining land use determinations, and bond forfeiture sites where reclamation is unreasonable, unnecessary, or impossible and were required in a final rule notice published in the **Federal Register** on October 24, 1991 (56 FR 55080). The revisions that Pennsylvania proposed at its own initiative concern money received from reclamation fees and the evaluation of bond forfeiture sites.

We announced receipt of the proposed amendment in the August 28, 2006, **Federal Register** (71 FR 50868). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment’s adequacy (Administrative Record No. PA 793.17). The public comment period ended on September 27, 2006. We did not hold a public hearing or meeting because no one requested one. We received written comments from three Federal agencies and one environmental organization.

**III. OSM’s Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, except as noted below, which includes removing five required amendments to the Pennsylvania regulatory program. We

are removing the required program amendments at 30 CFR 938.16 (mm), (nn), (oo), (pp), and (qq). Any revisions that we do not specifically discuss below concern nonsubstantive wording, editorial, or re-numbering of section changes and are approved here without discussion.

*1. Required Amendment at 30 CFR 938.16 (mm). Alternative Reclamation Plans and Applicable Performance Standards*

This required program amendment concerns alternative reclamation plans and applicable performance standards. The required program amendment codified in the Federal regulations at 30 CFR 938.16(mm) requires Pennsylvania to amend 25 Pa. Code 86.187(b)(1) or otherwise amend its program by requiring that alternative reclamation plans comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3), or (c)(4), whichever is appropriate.

The amendment was required because section 86.187(b)(1) can be misinterpreted. Currently paragraph (b)(1) provides that the PADEP may prepare and implement an alternative reclamation plan where it determines that the original plan may be amended to decrease the cost of reclaiming the bond forfeiture site. Without more clarification, this paragraph can be interpreted to allow the PADEP to approve an alternative reclamation plan that would not require reclamation in accordance with the applicable performance standards in accordance with 86.189(c)(2), (c)(3), and (c)(4), whichever is appropriate.

Therefore, paragraph (1) of subsection 86.187(b) was not approved by OSM in an October 24, 1991, rulemaking to the extent that it would allow the implementation of an alternative reclamation plan that fails to require reclamation in accordance with the applicable performance standards mentioned above. See 56 FR 55083.

In response to this required amendment, Pennsylvania has amended 25 Pa. Code 86.187(b) by clarifying that an alternative reclamation plan must be completed pursuant to 86.187(c). The PADEP is also amending 25 Pa. Code 86.187(c) with this amendment to include the requirement that alternative reclamation plans must comply with all applicable performance standards in accordance with 86.189(c)(2), (c)(3), and (c)(4). See Finding 2 below.

We find that this clarification satisfies the required program amendment codified in the Federal regulations at 30 CFR 938.16(mm) and can be approved. Therefore, the required program

amendment at 30 CFR 938.16(mm) can be removed.

*2. Required Amendments at 30 CFR 938.16 (nn). Bond Forfeiture Sites: Alternative Reclamation Plans and Alternative Postmining Land Use*

This required program amendment concerns bond forfeiture sites (alternative postmining land use determinations and alternative reclamation plans). The required program amendment codified in the Federal regulations at 30 CFR 938.16 (nn) requires Pennsylvania to submit a proposed amendment to 25 Pa. Code 86.187(c) and section 18(c) of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA) or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that alternative postmining land use determinations for sites with forfeited bonds, under the Federal interim program or under Pennsylvania's permanent program, be made to ensure that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.

The amendment was required because section 18(c) of PA SMCRA and 25 Pa. Code 86.187(c) currently allow an alternative reclamation plan that merely calls for reclaiming the land so that it is suitable for agriculture, forests, recreating wildlife or water conservation, without regard to whether the alternative postmining land use is equal to or higher than the premining land use as required by 30 CFR 816.133(a) and 817.133(a).

Therefore, section 18(c) of PA SMCRA and paragraph (c) of section 86.187 were not approved by OSM in an October 24, 1991, rulemaking to the extent that they did not provide for all disturbed areas to be restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses. See 56 FR 55084.

In response to this required amendment, Pennsylvania has amended 25 Pa. Code 86.187(c) by deleting language which allowed for alternate reclamation plans for bond forfeiture sites that would make the sites suitable, at a minimum, for agriculture, forests, recreation, wildlife or water conservation. The PADEP also added language to 86.187(c) that makes it clear that an alternate plan must comply with all applicable performance standards at 86.189(c)(2) through (c)(4), whichever is appropriate and ensure that all disturbed areas are restored to

conditions that are capable of supporting either the uses they were capable of supporting before any mining or higher or better uses.

PADEP did not submit changes to section 18(c) of PA SMCRA. Nevertheless, we believe that section 18(c) can be interpreted in a manner that does not compromise the amended requirements of section 86.187(c), and therefore conclude that the statutory provision need not be amended. Should we later determine that the previously unapproved portion of section 18(c) is being interpreted to override the new requirements at § 86.187(c), such that the program is again less effective than the Federal regulations, we will take action to reinstate the disapproval of the offending portion of section 18(c).

For the foregoing reasons, we find that the amendment to 25 Pa. Code 86.187(c) satisfies the requirements of 30 CFR 938.16(nn) and can be approved. Therefore, the required program amendment codified in the Federal regulations at 30 CFR 938.16(nn) can be removed.

*3. Required Amendment at 30 CFR 938.16 (oo). Bond Forfeiture Sites: Alternative Postmining Land Use Determinations/Alternative Reclamation Plans*

This required program amendment concerns bond forfeiture sites (alternative postmining land use determinations and alternative reclamation plans). The required program amendment codified in the Federal regulations at 30 CFR 938.16(oo) requires Pennsylvania to delete 25 Pa. Code 86.189(c)(5) or otherwise amend its program to be no less effective than 30 CFR 816.133(a) and 817.133(a) by requiring that sites bonded during the Federal interim program or under Pennsylvania's permanent program be restored to conditions that are capable of supporting the uses they were capable of supporting before any mining or higher or better uses.

The amendment was required because 25 Pa. Code 86.189(c)(5) currently allows for an alternative reclamation plan to make the site suitable, at a minimum, for agriculture, forests, recreation, wildlife or water conservation. The Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas be restored to uses they were capable of supporting before any mining or to higher or better uses. The Pennsylvania provision lacks a requirement that a site be restored to a higher and better use.

Therefore, paragraph (c)(5) of subsection 86.187 was not approved by OSM in an October 24, 1991,

rulemaking to the extent that it did not provide for all disturbed areas to be restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses. See 56 FR 55085. For the same reason, the Director did not approve the cross references to 86.189(c)(5) contained in 86.189(c)(2), (c)(3), and (c)(4).

In response to this required amendment, Pennsylvania has amended 25 Pa. Code 86.189 (c)(5) by deleting this paragraph which allowed for alternate reclamation plans for bond forfeiture sites that would make the sites suitable, at a minimum, for agriculture, forests, recreation, wildlife or water conservation. Federal regulations at 30 CFR 816.133(a) (relating to post mining land use) require that all disturbed areas be restored to uses they were capable of supporting before mining or to higher or better uses. The PADEP also deleted references to subsection (c)(5) at 86.189(c)(2), (c)(3), and (c)(4).

We find that the amendment to 25 Pa. Code 86.187(c)(2)–(5) satisfies the requirements of 30 CFR 938.16(oo) and can be approved. Therefore, the required program amendment codified in the Federal regulations at 30 CFR 938.16 (oo) can be removed.

*4. Required Amendment at 30 CFR 938.16 (pp): Bond Forfeiture Sites Where Reclamation Is Unreasonable, Unnecessary, or Impossible*

This required program amendment concerns bond forfeiture sites where reclamation is considered to be unreasonable, unnecessary, or impossible. The required program amendment codified in the Federal regulations at 30 CFR 938.16 (pp) requires that Pennsylvania delete 25 Pa. Code 86.190(a)(3).

The amendment is required because this section allows the landowner of a bond forfeiture site to prevent reclamation, rendering 25 Pa. Code 86.190 less effective than the Federal regulations at 30 CFR 800.50(b)(2). While Title V of SMCRA, 30 U.S.C. 1251–1279, contains no specific provisions authorizing the regulatory authority to compel a recalcitrant landowner to allow reclamation, the Federal regulations at 30 CFR 800.50(b)(2) are quite explicit in requiring the regulatory authority to use funds collected from the bond forfeiture to complete the reclamation plan for that site, recalcitrant landowners notwithstanding. Therefore, paragraph 86.190(a)(3) was not approved in an October 24, 1991, rulemaking. See 56 FR 55085–55086.

In response to this required amendment, Pennsylvania has deleted 25 Pa. Code 86.190(a)(3). We find that the deletion of 25 Pa. Code 86.190(a)(3) satisfies the requirements of 30 CFR 938.16(pp) and can be approved. Therefore, the required program amendment codified in the Federal regulations at 30 CFR 938.16 (pp) can be removed.

*5. Required Amendment at 30 CFR 938.16 (qq): Bond Forfeiture Sites Where Reclamation Is Unreasonable, Unnecessary, or Impossible*

This required program amendment concerns bond forfeiture sites where reclamation is considered to be unreasonable, unnecessary, or impossible. The required program amendment codified in the Federal regulations at 30 CFR 938.16 (qq) requires that Pennsylvania delete the words “but are not limited to” from the introductory paragraph of 25 Pa. Code 86.190(a).

The amendment was required because the introductory language of subsection (a) of section 86.190 currently includes the words “but are not limited to,” which are used to refer to the reasons justifying a determination that reclamation under the reclamation plan is unreasonable, unnecessary or physically impossible. Any such reasons which are not specifically contained in section 86.190 were not approved.

Currently, 25 Pa. Code 86.190(a) specifies parameters for determining when completion of the approved reclamation plan is unreasonable, unnecessary, or physically impossible. The reasons justifying such a determination include, but are not limited to the following: (1) The site has been re-permitted and re-bonded for mining and reclamation is required as a condition of the permit; (2) the site has been otherwise reclaimed; (3) the landowner refused to allow the site to be reclaimed and the site is not a hazard to public health, safety, and welfare or adjacent property. Subsection 86.190(a) also provides that if the reclamation plan cannot be completed, the bond amount will be made available for expenditure to reclaim other lands or restore water supplies affected by other surface mining operations for which the Department has forfeited bonds.

As we noted in an October 24, 1991, rulemaking notice, the introductory language of subsection (a) of section 86.190, concerning the use of funds for other sites where reclamation of the forfeited site is unreasonable, unnecessary or physically impossible, mirrors the language of subsection (b),

section 18, of PA SMCRA. See 56 FR 55085. This provision of Pennsylvania law was approved by the Secretary, as part of Pennsylvania’s original permanent program approval.

The reasons specified at section 86.190(a)(1), (a)(2), and (a)(3) for making a determination not to reclaim a site have not previously been approved by OSM. If as provided in paragraph (1) of subsection (a), the site has been re-permitted and re-bonded for mining with full reclamation of the entire area made a permit condition, then forfeited bond money from the original permit is not needed for reclamation of the site. Likewise, as provided in paragraph (2), forfeited bond money is not needed to reclaim the site if it has been otherwise reclaimed, as long as such reclamation was performed in compliance with the reclamation plan and in accordance with the performance standards of the Pennsylvania program. Therefore, while there are no specific Federal counterparts to paragraphs (1) and (2) of subsection (a) of section 86.190, we previously found that these provisions were not inconsistent with SMCRA and the Federal regulations and they were approved to the extent that full reclamation of the site in accordance with the reclamation plan and all applicable performance standards are required. The PADEP also amended § 86.190(a)(3) by deleting this section. See Finding 4. Because the basis for the Secretary’s approval of 18(b) of PASMCRRA had not changed, the Director approved the introductory paragraph of subsection 86.190 (a) in an October 24, 1991, rulemaking, except for the words “but are not limited to.” *Id.*

In response to this required amendment, Pennsylvania has amended 25 Pa. Code 86.190(a) to delete the words “but are not limited to” to make clear that any reasons other than those specifically provided in 25 Pa. Code 86.190(a) are not permissible. We find that the amendment to 25 Pa. Code 86.190(a) satisfies the requirements of 30 CFR 938.16(qq) and can be approved. Therefore, the required program amendment codified in the Federal regulations at 30 CFR 938.16 (qq) can be removed.

*6. Additional Change: 25 Pa Code 86.17(e)—Reclamation Fees*

Pennsylvania has amended this subsection to discontinue the collection of the \$100 per acre reclamation fee from permittees under 25 Pa. Code 86.17(e). The reclamation fee is deposited in the Surface Mining Conservation and Reclamation Fund (Fund) as a supplement to forfeited bonds and is used for reclaiming mining

operations which have defaulted on their obligation to reclaim mined sites.

Because issues regarding the Fund's solvency had become apparent, PADEP revised its bonding requirements and is now requiring all mine permits to post a full cost reclamation bond. The PADEP believes that because all of its permittees are now subject to full cost bonding requirements, there is no longer a basis for maintaining the supplement (the per acre fee).

The issue of whether OSM acted within its discretion when it concluded that the Fund is no longer subject to the requirements of 30 CFR 800.11(e) is pending before the United States Court of Appeals for the Third Circuit in the matter of *Pennsylvania Federation of Sportsmen's Clubs v. Norton*, (PFSC v. Norton) No. 06-1780. The outcome of this case could affect whether OSM may approve the proposed change to 25 Pa. Code 86.17(e). Therefore, in the interest of judicial economy, we are deferring our decision on this proposed change until final disposition of the *PFSC v. Norton* matter.

**7. Additional Change: 25 Pa Code 86.187(a)(1)—Money Received From the Fees**

Pennsylvania has amended 25 Pa. Code 86.187(a)(1) to correct a typographical error. In paragraph (a)(1), reference was improperly made to 25 Pa. Code 86.17(b) (relating to permit and reclamation fees). The correct reference is to 25 Pa. Code 86.17(e). We find that the amended citation at 25 Pa. Code 86.187(a)(1) corrects a citation error and does not render the Pennsylvania program inconsistent with SMCRA or the Federal Regulations and can be approved.

**8. Additional Change: 25 Pa Code 86.188(b)(5) and (c)(3)—Evaluation of Bond Forfeiture Sites**

Pennsylvania has amended 25 Pa. Code 86.188 by deleting 25 Pa. Code 86.188(b)(5) and 86.188(c)(3) in order to make it clear that bond forfeiture funds posted for and still needed to complete reclamation of the specific site for which the bonds were forfeited will not be used for reclamation of other sites until reclamation of the forfeited site has been completed.

Currently, 25 Pa. Code 86.188(b) lists the categories in decreasing priority order to be used when the Department is considering bond forfeiture site reclamation. Subsection (b)(5) refers to "other sites which need reclamation." Furthermore, section (c) lists the factors that the Department will consider in selecting sites for reclamation under 25 Pa. Code 86.189(b)(1). Subsection (c)(3)

considers the availability of funds to accomplish the required reclamation of the site or that portion of the site which is threatening life, health, safety, other property or the environment.

As noted in an October 24, 1991, rulemaking notice, subsections (b) and (c) were not approved by OSM to the extent that they would allow bond forfeiture funds posted for and needed to complete reclamation of a specific site to be used for reclamation of other sites. See 56 FR at 55084. To the extent that these subsections provided only for a ranking of sites for reclamation without compromising the requirement that all sites for which bonds were posted be properly reclaimed, it was determined they were not inconsistent with section 509(a) of SMCRA and 30 CFR 800.50(b)(2) of the Federal regulations.

The PADEP is addressing the concerns expressed in the October 24, 1991, rulemaking and is deleting the subsections (b)(5) and (c)(3) to remove any doubt that the PADEP intends to maintain adequate bonding to have funds available for completion of reclamation should the bonds be forfeited. We find that the amended regulations at 25 Pa. Code 86.188(b) and (c) are not inconsistent with SMCRA or the Federal regulations and can be approved.

**9. Additional Change: 25 Pa Code 86.283(c)—Reclamation Fees for Remining Areas**

Pennsylvania has amended 25 Pa. Code 86.283(c) to remove a reference to the per acre reclamation fee for remining areas for mine operators approved to participate in the financial guarantees program. PADEP has submitted this amendment to create consistency with the proposed amendment to 86.17(e) that would delete the per-acre reclamation fee requirement. See Finding 6 above.

We are deferring our decision on the proposed amendment at 25 Pa. Code 86.283(c) for the same reason set forth above at Finding 6 in support of our deferral with respect to the proposed change at 86.17(e).

**IV. Summary and Disposition of Comments**

**Public Comments**

We asked for public comments on the amendment (Administrative Record No. PA-793.17). We received comments from one organization, the Citizens for Pennsylvania's Future (PennFUTURE) (Administrative Record No. PA 793.18). PennFUTURE objected to the portion of the program amendment that would

discontinue the collection of Pennsylvania's reclamation fee at 25 Pa. Code 86.17(e), and requested that we defer our decision on this proposed change until such time as the matter of *PFSC v. Norton* is decided by the United States Court of Appeals for the Third Circuit.

As we noted above in Finding 6 above, we are deferring our decision with respect to the proposed amendment to 86.17(e), as well as on an ancillary proposed change at 86.283(c) (See Finding 9 above). Because we are deferring our decision, we will not respond to PennFUTURE's comments in opposition to these amendments in this rulemaking. Instead, we will respond to the comments in a future rulemaking, wherein we will decide whether or not to approve the proposed changes to 86.17(e) and 86.283(c).

**Federal Agency Comments**

Under Federal regulations at 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 793.12). The Mine Safety and Health Administration (MSHA), District 1, responded (Administrative Record No. PA 793.13) and stated that it did not have any comments or concerns regarding this request. The Natural Resources Conservation Service responded (Administrative Record No. PA 793.14) and stated that it did not have any comments regarding this request.

**Environmental Protection Agency (EPA) Concurrence and Comments**

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On June 6, 2006, we requested comments on the amendment from EPA (Administrative Record No. PA 793.15). The EPA, Region III, responded and stated that it did not identify any inconsistencies with the Clean Water Act or any other statutes or regulations under its jurisdiction.

## V. OSM's Decision

Based on the above findings, we approve, with certain exceptions, the amendment Pennsylvania sent to us on May 23, 2006. We are removing the required program amendments codified in the Federal regulations at 30 CFR 938.16(mm), (nn), (oo), (pp), and (qq) and approving two additional changes to the Pennsylvania program. We defer decision on two provisions regarding the reclamation fees at 25 Pa. Code 86.17(e) and 86.283(c). See Findings 6 and 9, respectively.

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

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

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

### *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, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments 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 Government*

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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian 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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on proposed State regulatory program provisions does 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)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by 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 amendment that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; 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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 23, 2007.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

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

2. Section 938.15 is amended by adding a new entry in the table in chronological order by "Date of final publication" to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

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Original amendment submission date	Date of final publication	Citation/description
May 23, 2006	April 17, 2007	25 Pa. Code: 86.187(a)(1), (b), (c); 86.188(b)(5) [deleted]; 86.188(c)(3) [deleted]; 86.189(c)(2) through (c)(4) [deleted reference to (c)(5)], 86.189 (c)(5) [deleted]; 86.190 (a) [the words "but are not limited to" are deleted]; 86.190(a)(3) [deleted].

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraphs (mm), (nn), (oo), (pp), (qq).

[FR Doc. E7-7227 Filed 4-16-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070119012-7077-02; I.D. 031307B]

RIN 0648-AU78

Pacific Albacore Tuna Fisheries; Vessel List to Establish Eligibility to Fish for Albacore Tuna in Canadian Waters Under the U.S. Canada Albacore Tuna Treaty

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to develop a new vessel list at the beginning of each calendar year of U.S. vessels eligible to fish for albacore tuna in Canadian waters. The vessel list would revert to zero vessels on December 31 of each year, unless NMFS receives a notice for a vessel to be added to the list for the upcoming year, with the requisite information. This regulation would clarify that the vessel list will remain valid for a single calendar year. Updating the list every year will facilitate the United States' obligation to annually provide Canada a

current list of U. S. vessels that are likely to fish albacore off the coast of Canada. The proposed rule is adopted without change.

DATES: This final rule will be effective May 17, 2007.

ADDRESSES: You may submit requests to be placed on the annual list of U.S. vessels eligible to fish for albacore tuna in Canadian waters, by any of the following methods:

- E-mail: albacore.fish@noaa.gov.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.
- Phone: (562)980-4024.
- Fax: (562) 980-4047.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Southwest Region and by e-mail to David\_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Chris Fanning, Southwest Region, NMFS, (562) 980-4198 or (562) 980-4030.

SUPPLEMENTARY INFORMATION: On February 7, 2007, NMFS published a proposed rule (72 FR 5652) proposing to revise the methodology to create a vessel list for vessels eligible to fish for albacore tuna in Canadian waters. The proposed rule is adopted without change. The 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty), as amended in 2002, establishes a number of obligations for both countries to control reciprocal fishing in waters of one country by vessels of the other country.

One obligation requires each country to annually provide to the other country a list of its fishing vessels that are expected to fish for Pacific albacore tuna off the coast of the other country during the upcoming fishing season, generally June through October each year.

As described in the 2004 final rule implementing amendments to the Treaty (69 FR 31531, June 4, 2004), and codified at 50 CFR 300.172, the list must include vessel and owner name, address, and phone number; USCG documentation number (or state registration if not documented); vessel operator (if different from the owner) and his or her address with phone number. Each U.S. vessel must be on the list for at least 7 days prior to engaging in fishing under the Treaty. This is intended to ensure that both countries have equal information as to eligible vessels. Canadian and U.S. enforcement officers need up-to-date lists of eligible vessels to adequately enforce the Treaty. Vessel owners who wish their vessels to remain on, or be added to the vessel list must contact NMFS (see ADDRESSES) and provide the required information. NMFS will notify fishermen via a confirmation letter or email of the date the request to be on the list was received and the date the vessel was placed on the list.

Before the 2006 fishing season (June through October), NMFS did not require owners of albacore fishing vessels that wanted their vessels to be on the list of U. S. vessels eligible to fish for albacore tuna in Canadian waters under the Treaty, to contact NMFS. Instead, NMFS relied on a lengthy list created from information provided by the industry that was not readily verifiable and did not indicate whether each vessel owner