I. Background on the Pennsylvania Program

Pennsylvania Regulatory Program

II. Submission of the Amendment

III. OSM's Findings

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will be used by the Department to cover its costs to review applications.

OSM finds that this provision is consistent with regulations issued pursuant to 30 CFR 777.17. Accordingly, we are approving this portion of the amendment.

Revisions to Pennsylvania's Regulations That Are No Less Effective Than the Corresponding Provisions of the Federal Regulations and No Less Stringent Than SMCRA

Definition of “Permit application fee” at 25 Pa. Code 86.1

Pennsylvania proposes the addition of a new term; the definition of “Permit application fee.” This term will be found at 25 Pa. Code 86.1. Pennsylvania has always assessed a fee for permits consistent with Section 4(a) of the Pennsylvania Surface Mining Conservation and Reclamation Act and in a manner no less stringent than SMCRA, but did not define this term. In addition to the term, “Permit application fee” being introduced in the “Definitions” section, it will be incorporated in §66.17, as a sub-section heading and shall be defined as, “[a] nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.” While there are no direct Federal counterpart provisions, section 507(a) of SMCRA specifically authorizes the implementation of a fee for permit applications, providing that a permit application “shall be accompanied by a fee as determined by the regulatory authority, which may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit . . .” and that “[t]he regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.” Therefore, we find Pennsylvania’s introduction of this definition to be no less stringent than SMCRA. Accordingly, we are approving this portion of the amendment.

Pennsylvania’s Revision to 25 Pa. Code 86.17, Permit and Reclamation Fees, Creating an Increase in Permit Fees

Pennsylvania has resolved to increase the permit application fee schedule for coal mining permit activity applications in order to pay the costs the Department of Environmental Protection (“PA DEP”) incurs in reviewing permit applications. Prior to this submission, a permit application for coal mining activities or a coal preparation plant was required to be submitted with an application fee of $250. Additionally, any permit application fee for coal refuse disposal activities required a fee of $500, plus an additional $10 per acre fee for acreage in excess of 50 acres. This submission increases the fees and creates new categories of permits with differing fees. Surface mining and coal refuse disposal permits will be assessed a fee of $3,250; coal refuse reprocessing permits will be assessed a fee of $1,900; coal preparation plants, anthracite underground mining, and incidental extraction permits will be assessed a fee of $1,650; bituminous underground mining permits will be assessed a fee of $5,750; and post-mining activity permits will be assessed a fee of $300. As discussed above, SMCRA gives the regulatory authority discretion in selecting the fee to be imposed, stating that the fee “may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit. . .” In establishing the new fees, Pennsylvania calculated the amounts using a workload analysis system. This system assigns a specific number of hours to each task to be completed, such as processing a permit application based on historical data recorded by staff. Using this historical data, the new fees were determined.

Under subsection (b)(2) of the amendment, a new fee for major permit revisions is imposed. This fee is either $300 or $1,250, depending upon the permit type.

Subsection (b)(3) introduces a new fee of $250 for permit transfers. The renewal fee, as detailed in subsection (b)(4), continues to be assessed under the former rate of $250. Additionally, new fees for auger safety and bond liability revisions will be assessed in the amount of $200 and $100, respectively. Subsection (c) now describes how the collected fees will be allocated. Permit application fees collected for surface coal mine facilities, coal refuse reprocessing facilities, and coal mining activity facilities will be deposited in the Surface Mining Conservation and Reclamation Fund. Permit application fees for bituminous underground mines will be deposited in the Bituminous Mine Subsidence and Land Reclamation Fund. The fees collected for coal refuse disposal facilities are to be deposited in the CRDCF.

The amendment also adds a new component at subsection (d). This subsection requires the PA DEP to review the adequacy of the permit application fees at least once every three years. The results of this review must be submitted in writing to Pennsylvania’s Environmental Quality Board.

Specifically, the proposed report will identify and reconcile any disparity between the amount of income generated by the fees and the cost to administer these programs as well as recommend a fee increase, as necessary. Subsection (e) of the current regulation will remain unaltered.

Pennsylvania has established that it has discretion in defining the fees for permit applications provided Pennsylvania conforms to section 507 of SMCRA in performing this analysis. As demonstrated, Pennsylvania, using the recommendations of the PA DEP and the Mining and Reclamation Advisory Board, reviewed historical data to determine the costs of reviewing, processing, and performing these tasks. We find the proposed Pennsylvania amendment to be no less stringent than the applicable SMCRA provisions and no less effective than the regulations promulgated thereunder. Therefore, we are approving this portion of the amendment as proposed by Pennsylvania.

Pennsylvania also proposes the addition of the term, “Major Permit Revisions,” to be added to the Definitions section found at 25 Pa. Code 86.1. This term is also used as a section header, found at 25 Pa. Code 86.17(b)(2). OSM considered the use of this term, taking into consideration EPA’s reservations regarding the introduction of this term into the Pennsylvania program. EPA’s concerns are discussed at length in the “Federal Agency Comments” section below.

There is no direct, definitional Federal counterpart within SMCRA for the proposed term, “Major Permit Revisions”; however, OSM finds sufficient support for incorporating this term into the Pennsylvania program and has found it to be no less stringent than SMCRA and no less effective than the regulations promulgated thereunder. This, too, is discussed in the “Federal Agency Comments” section below.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments (Administrative Record Number PA 895.03) on the amendment when advertising the existence of the proposed amendment in the Federal Register on February 26, 2013. We did not receive any public comments on the proposed amendment.

Federal Agency Comments

Under 30 CFR 732.17(b)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from
that, consistent with section 702 of 40 CFR 123.62. However, OSM notes the regulations at 40 CFR Part 124 and comment, as the agency promulgating comment. things, public notice and opportunity to apply and may require, among other Federal regulatory requirements at § 86.1, be clarified to specifically state regulations. Specifically, the approved Pennsylvania program incorporates by reference provisions of Chapter 92a of the Pennsylvania regulations that govern the implementation of the NPDES Permitting, Monitoring, and Compliance. For each of the permit applications or major permit revisions referenced in the proposed amendment, there are applicable Pennsylvania regulations that incorporate by reference the requirements of the regulations promulgated pursuant to the CWA and the Pennsylvania counterpart, the Clean Streams Law, 35 P.S. 691.5. For example, relative to surface coal mining permits, 25 Pa. Code 87.102(f), Hydrologic balance: effluent standards, specifically reads: In addition to the requirements of subsections (a)–(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91, 92, 93, 95, 97 (reserved) and 102. The provisions in Pennsylvania’s Chapter 92 deal specifically with Public Participation. This portion of the Pennsylvania environmental protection regulation, found at 25 Pa. Code 92a.82, is incorporated by reference into the Pennsylvania program. Therefore, the Pennsylvania program specifically requires that when dealing with the discharge of water from areas disturbed by mining activities, “a public notice of every new draft individual permit, or major amendment to an individual permit, will be published in the Pennsylvania Bulletin.” (25 Pa. Code 92a.82(b)) With respect to categorizing revisions and modifications as “minor” or “major,” OSM notes that the Pennsylvania definition of “minor amendment,” found at 25 Pa. Code 92a.2, directly mirrors, with a few insignificant exceptions, the definition of “Minor modifications” as promulgated by the EPA at 40 CFR 122.63. The Pennsylvania regulations also provide for a standard 30-day public comment period following publication. (25 Pa. Code 92a.82) In addition to the provision of the Pennsylvania program dealing with surface coal mining permits, there are similar provisions found at: 25 Pa. Code 89.52(2), applicable to underground coal mine permits and coal preparation facilities permits; 25 Pa. Code 90.102(f), applicable to coal refuse disposal permits, and 25 Pa. Code 88.92(b) applicable to anthracite coal mine permits. The presence of these public notice requirements dispense with the concern raised by the EPA that modifications to NPDES permits may not receive required public notice and comment periods. Therefore, while taking the EPA’s comment into consideration, we conclude that this aspect of the amendment may be approved as it is no less stringent than SMCRA and no less effective than the implementing regulations. State Historic Preservation Officer (“SHPO”) and the Advisory Council on Historic Preservation (“ACHP”) Under 30 CFR 732.17(b)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 26, 2012, we requested comments on Pennsylvania’s amendment (Administrative Record PA 895.01), but neither responded to our request. V. OSM’s Decision Based on the above findings, we approve the amendment proposed by Pennsylvania and sent to OSM on December 19, 2012. We approve, as discussed in finding number 1, 25 Pa. Code 86.3, concerning the CRDCF fund; finding number 2, 25 Pa. Code 86.1, concerning the definition of permit application fee; and finding number 3, 25 Pa. Code 86.17, concerning the change in amount and addition of fees. Moreover, as stated herein, OSM, while considering the comments received by the EPA, finds that the introduction of the definition, “Major Permit Revisions” found at 25 Pa. Code 86.1, of the Pennsylvania amendment and the reference thereto at 25 Pa. Code 86.17(2), is no less stringent than SMCRA and is not construed as superseding, amending, modifying, or repealing the Federal regulatory requirements for NPDES permit modifications. Specifically, the Pennsylvania program provides for public notice and opportunity to comment for “. . . major amendment to an individual permit.” (25 Pa. Code 92a.82(b)) VI. Procedural Determinations Executive Order 12630—Takings This rule does not have takings implications. This determination is based on the analysis performed for the Federal regulations. Section 507(a) of
SMCRA gives the regulatory authority discretion in selecting the fee to be imposed. Other changes implemented through this final rule notice are administrative in nature and have no takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b). However, these standards are not applicable to the actual language of SMCRA and the program amendments because each plan 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 plans and plan amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing 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 because it does not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule merely approves a program amendment submitted by the State of Pennsylvania at its own initiative.

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 pertains to the Pennsylvania 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 requiring agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 (Regulatory Planning and Review), and (2) likely to have 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 762(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)). It is further documented in the DOI Departmental Manual 516 DM 13.5, that agency decisions on approval of State regulatory programs do not constitute major Federal actions.

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 effect 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 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 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 Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.


Thomas D. Shope,
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

§ 938.15 Approval of Pennsylvania regulatory program amendments.

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG–2013–0723]

**Annual Marine Events in the Eighth Coast Guard District, Sabine River; Orange, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce Special Local Regulations for the Southern Professional Outboard Racing Tour (S.P.O.R.T.) boat races to be held on the Neches River in Orange, TX from 3 p.m. on September 20, 2013, through 6 p.m. on September 22, 2013. This action is necessary to provide for the safety of the participants, crew, spectators, participating vessels, non-participating vessels and other users of the waterway. During the enforcement period no person or vessel may enter the zone established by the Special Local Regulation without permission of the Captain of the Port (COTP) Port Arthur or his designated on-scene Patrol Commander.

**DATES:** The regulation in 33 CFR 100.801 will be enforced from 3 p.m. to 6 p.m. on September 20, 2013; and from 9 a.m. to 6 p.m. on September 21 and 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email Mr. Scott Whalen, U.S. Coast Guard Marine Safety Unit Port Arthur, TX; telephone 409–719–5086, email scott.k.whalen@uscg.mil.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce Special Local Regulation for the annual S.P.O.R.T. boat races in 33 CFR 100.801(60) on September 21, 2012, from 3 p.m. to 6 p.m. and on September 22 and 23, 2012 from 9 a.m. to 6 p.m.

Under the provisions of 33 CFR 100.801, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port or his designated on-scene Patrol Commander. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede participants or official patrol vessels. The Coast Guard may be assisted by other federal, state or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.801 and 33 U.S.C. 1233. In addition to this notice in the Federal Register, the Coast Guard will provide the maritime community with notification of this enforcement period via Local Notice to Mariners, Marine Information Broadcasts, and Marine Safety Information Bulletins.

If the Captain of the Port or his designated on-scene Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 30, 2013.

G.J. Paitl,
Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2013–21924 Filed 9–9–13; 8:45 am]

BILLING CODE 9110–04–P

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2013–0807]

**Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across the Lake Washington Ship Canal, mile 0.1, at Seattle, WA. This deviation is necessary to facilitate heavy maintenance on the bridge. This deviation allows the bridge to remain in the down, or closed position, during the maintenance period.

**DATES:** This deviation is effective from 9 a.m. on November 5, 2013 to 11:59 p.m. on November 14, 2013.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0807] is available at http://www.regulations.gov.

Type the docket number in the “SEARCH” box and click “SEARCH.”

Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Lieutenant Commander Steven Fischer, Thirteenth District Bridge Program Office, Coast Guard; telephone (206)220–7277, Steven.M.Fischer2@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** BNSF Railway has requested that the draw of the BNSF Railway Bridge across the Lake Washington Ship Canal, mile 0.1 (Ballard-Salmon Bay), be locked in the closed position and not be required to open for the passage of vessels on 4 separate days during a 9 day period to facilitate heavy maintenance on the bridge. The bridge provides 43 feet of vertical clearance above mean high water while in the closed position. Under normal operations this bridge opens on signal as required by 33 CFR 117.5 and 33 CFR 117.1051(c). The deviation period is from 9 a.m. on November 5, 2013 to 11:59 p.m. on November 14, 2013. This deviation allows the draw span of the BNSF Railway Bridge across the Lake Washington Ship Canal, mile 0.1, to remain in the closed position and to not open for maritime traffic from 9 a.m. to 11:59 p.m. on November 5, 2013, and 9 a.m. to 11:59 p.m. on November 7, 2013, and 9 a.m. to 11:59 p.m. on November 12, 2013, and 9 a.m. to 11:59 p.m. on