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DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation
and Enforcement

30 CFR Part 938

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Pennsylvania Regulatory Program
AGENCY: Office of Surface Mining
Reclamation and Enforcement, Interior.
ACTION: Final rule.

SUMMARY: We, the Office of Surface
Mining Reclamation and Enforcement
(OSMRE), are approving an amendment
to the Pennsylvania regulatory program
under the Surface Mining Control and
Reclamation Act of 1977 (SMCRA or the
Act). The amendment authorizes and
implements a land reclamation financial
guarantee program as a new alternative
bonding option for operators that meet
certain requirements. The amendment
also authorizes and implements a
bioenergy crop bonding program to
provide financial guarantees to reining
operators that grow bioenergy crops as
a postmining land use. Finally, the
amendment standardizes certain terms
and corrects citations in statutory and
regulatory provisions affected by the
addition of a new section to the
Pennsylvania regulatory program or
changed for other reasons.
DATES: This rule is effective September
9, 2024.

FOR FURTHER INFORMATION CONTACT: Mr.
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SUPPLEMENTARY INFORMATION:
I. Background on the Pennsylvania Program
II. Submission of the Amendment
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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 approved State
program includes, among other things,
State laws and regulations that govern
surface coal mining and reclamation
operations in accordance with the Act
and consistent with the Federal
regulations. 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, 938.13, 938.15, and
938.16.
II. Submission of the Amendment
By letter dated July 26, 2017
(Administrative Record No. PA 900.00),
the Pennsylvania Department of
Environmental Protection (PADEP) sent
us an amendment to its program under
SMCRA (30 U.S.C. 1201 et seq.). The
amendment included the following
proposed changes to the Pennsylvania
Surface Mining Control and
Reclamation Act (PASMCR), 52 P.S.
1396.1–1396.19b, title 25 of the
Pennsylvania Code, and Pennsylvania’s
approved program.
Statutory Changes
Mining Permit and Bioenergy Crop
Bonding, Act 95 of 2012, House Bill 608
Pennsylvania adopted an amendment
to PASMCR (52 P.S. 1396.1–1396.19b),
Act 95, entitled Mining Permit and
Bioenergy Crop Bonding, on July 5,
2012, Public Law 918, No. 95, and
designated it as becoming effective on
September 3, 2012 (pending OSMRE
approval). In addition to standardizing
references to “department” and
“secretary” throughout PASMCR, Act
95 amended section 4(a) to “encourage
and promote” the use of bioenergy crops

for revegetation during reclamation of
remined lands. See 52 P.S.
1396.4(a)(2)(c) (referring to remined
lands as “areas previously disturbed by
mining activities that were not
reclaimed to the standards of this act”).
In addition, the provisions added
section 4.14 to PASMCR, 52 P.S.
1396.4(n), which provides for sum-
certain financial guarantees to
qualifying operators for stage III
reclamation liability at reining sites,
among other things.
Mining Permit, Reclamation Plan, and
Bond and Land Reclamation Financial
Guarantees, Act 157 of 2012, House Bill
1813
Pennsylvania adopted an amendment
to PASMCR (52 P.S. 1396.1–1396.19b),
Act 157, entitled Mining Permit,
Reclamation Plan, and Bond and Land
Reclamation Financial Guarantees, on
October 24, 2012, Public Law 1276, No.
157, and designated it as becoming
effective on December 23, 2012
(pending OSMRE approval). Act 157
amended section 4 of PASMCR and
added section 19.2 (52 P.S. 1396.19b). In
conjunction, these provisions authorize
and direct PADEP to establish a program
to provide “land reclamation financial
guarantees” (LRFGs) to qualified
operators to ensure reclamation of
certain mining lands. An LRFG is a form
of bond or collateral that may be
available to qualified surface coal
mining operators engaged in surface
mining activities. Pennsylvania
provides the financial guarantee to
qualified operators to satisfy, in part, the
required bond obligation.
The LRFG program provides for the
assessment and collection of premiums
from operators for such guarantees in an
amount sufficient to assure the financial
stability of the financial guarantee
program and to cover Pennsylvania’s
cost to administer the program. This
program replaces Pennsylvania’s
Conversion Assistance Program (CAP) of
2001. The CAP was a temporary
program intended to assist existing mine
operations in transitioning to
Pennsylvania’s newly established full
cost bonding requirements. The
statutory provisions address site and
operator eligibility, establish an account
for a new program in the Surface Mining
Conservation and Reclamation Fund
(referred to as the LRFG Account), and

authorize the transfer of funds from the CAP to the LRFG Account. In addition, these provisions authorize PADEP to transfer funds from the LRFG Account into the Remining Financial Assurance Fund, established under 52 P.S. 1396.18, or into the Reclamation Fee Operation and Maintenance Trust Account (hereafter the "Trust Account"), established under 25 Pa. Code 86.17 and 86.187, as well as to allocate interest earned on the account. These provisions also set conditions for management of the account and dissolution of the program.

Regulatory Changes

On April 21, 2015, the Pennsylvania Environmental Quality Board adopted changes to mining regulations in title 25 of the Pennsylvania Code, changes that were designated as becoming effective on August 22, 2015. In particular, the Board adopted sections 86.162b and 86.162c and made various amendments to chapters 77, 86 to 90, and 211. The additional sections in chapter 86 implemented the statutory changes in Act 95 and Act 157. The amendments in chapters 77, 86 to 90, and 211 also corrected citations affected by addition of section 19.2 to PASMCR, corrected additional citations changed for other reasons, and made other non-substantive changes.

We announced receipt of the proposed amendment in the April 3, 2019, **Federal Register** (84 FR 12983). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because one was not requested, and we received no public comments. The public comment period ended on May 3, 2019.

III. OSMRE's Findings

We are approving the amendment to the Pennsylvania regulatory program under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, as described in our findings below. The full text of the amendment is available at www.regulations.gov.

Finding 1: Section 4(d) of PASMCR

Pennsylvania, through Act 157, revised section 4(d) of PASMCR to add LRFGs to the list of available forms of reclamation bond set out in section 4(d). The revised provision requires that LRFGs be consistent with section 19.2 of PASMCR and regulations implementing the LRFG program, which are described in *Finding 2* and *Finding 4*.

OSMRE Finding: We have determined that the change to this section is no less stringent than section 509(a) of SMCRA, 30 U.S.C. 1259(a), which requires that performance bonds be sufficient to assure completion of reclamation, and that it is no less effective than the Federal regulation at 30 CFR 800.11(e), which governs OSMRE approval of alternative bonding systems. The LRFG program as referenced in section 4(d), described at section 19.2 of PASMCR, and implemented by the proposed regulations at 25 Pa. Code 86.162b, is an alternative bonding system. For reasons discussed in *Finding 2* and *Finding 4*, this system meets the requirements of 30 CFR 800.11(e)(1) and (2) that alternative bonding systems assure financial solvency and include a substantial incentive for operators to fulfill their reclamation plans.

Finding 2: Section 19.2 of PASMCR

Pennsylvania, through Act 157, added section 19.2 to PASMCR. See 52 P.S. 1396.19b. Section 19.2 made LRFGs an acceptable form of bond or collateral, available to certain operators for use in combination with surety bonds, as further discussed below. Pennsylvania provides the financial guarantee to qualified operators to satisfy, in part, the required bond obligations. In addition, section 19.2 directed the Environmental Quality Board to promulgate regulations implementing the LRFG program, and the Board did so on April 21, 2015.

As discussed in *Finding 4*, the implementing regulations at 25 Pa. Code 86.162b provide, among other things, that qualifying for an LRFG requires an operator to have possessed a coal mining license in Pennsylvania for at least five years and have a surety bond or letter of acceptance for a surety bond covering at least 50 per cent of the reclamation liability for the site. In addition, the implementing regulations provide for the assessment and collection of premiums from operators for such guarantees in an amount sufficient to assure the financial stability of the program and to cover Pennsylvania's cost to administer it. These premiums are paid on an annual basis and are additional to the one-time, acreage-based reclamation fees that operators pay into the Trust Account upon permit issuance.

This program replaces the CAP, which replaced a predecessor program (alternative bonding system) in 2001, a change that was accompanied by "conversion" of all surface coal mine sites to full-cost bonding. The CAP program was created to serve as a bridge to the new full-cost bonding program. Section 19.2 replaces the CAP through

terms that address site and operator eligibility, establishment of an account for the financial guarantees (specifically, the LRFG Account), transfer of funds from the CAP program to the LRFG Account, and transfer of funds from the LRFG Account into either the Remining Financial Assurance Fund or the Trust Account. In addition, these provisions address allocation of interest earned in the account, conditions for dissolution of the program, and management of the account.

OSMRE Finding: We have determined that the provisions of section 19.2 are no less stringent than section 509(a) of SMCRA, 30 U.S.C. 1259(a), and no less effective than the Federal regulation at 30 CFR 800.11(e). Under section 800.11(e), OSMRE may approve alternative bonding systems if they assure financial solvency and include a substantial economic incentive for operator compliance with reclamation standards. We find that section 19.2 does so.

Pennsylvania's implementing regulations include several provisions intended to assure financial solvency, as discussed below. In addition, subsection 19.2(b)(1) directs Pennsylvania to assess and collect premiums annually from operators who choose to obtain the financial guarantees. This subsection also directs Pennsylvania to establish, by regulation, an annual premium amount sufficient to assure the stability of the fund. Subsection 19.2(b)(3)(i) adds to the overall solvency of the account by transferring funds from the previous financial guarantee program (the CAP), and subsection 19.2(b)(7) authorizes the appropriation of up to \$2 million annually to supplement the program.

Pennsylvania also proposes to limit solvency risk by screening potential financial guarantee recipients according to the provisions in subsection 19.2(c), including site conditions, operator financial stability, operator compliance history, and the availability of coal reserves at the site. Pennsylvania proposes to track and respond to the changing financial outlook of the account through regulations establishing underwriting methods for insuring the account against declared forfeitures, subsection 19.2(d)(2), and by allowing the guarantee program to cease immediately if 25 percent or more of the outstanding bond amounts in the program are declared forfeit, subsection 19.2(e)(1). These measures, along with further limitations described in the amendment's implementing regulations at 25 Pa. Code 86.162b (discussed and approved in *Finding 4* below) and 86.162c (discussed and approved in

Finding 9 below), aid in assuring that Pennsylvania will maintain sufficient funds to complete reclamation activities at any site where the operator forfeits the bond, as required by 30 CFR 800.11(e)(1).

For these reasons, we have determined the LRFG program proposed in section 19.2 is no less stringent than SMCRA and no less effective than the applicable Federal regulations. Accordingly, we are approving section 19.2 of PASMCRA.

*Finding 3: 25 Pa. Code 86.17(e)(2).
Permit and Reclamation Fees*

Pennsylvania revised this subsection of chapter 86 of its administrative code to add additional reporting requirements to the annual fiscal-year report to the legislature on the revenue and expenditures of the Reclamation Fee Operation and Maintenance Trust Account. In addition to items previously required when the Trust Account was originally established under 25 Pa. Code 86.17 and 86.187, information about the need for supplemental funding would now be required in the annual report. The revised subsection also requires PADEP to provide an estimate of the per-acre charge to be assessed in the next calendar year on operators seeking permits. This one-time reclamation fee is paid by operators and credited to the Trust Account. PADEP calculates the per-acre fee based on projected revenues and expenditures for the upcoming year.

OSMRE Finding: We have determined that this change is no less effective than the Federal regulation at 30 CFR 800.11(e)(1). The regulation requires that alternative bonding systems include measures to assure that the regulatory authority will have enough money to complete reclamation at bond forfeiture sites. This regulatory change requires Pennsylvania to add information to the annual program analysis about the funding mechanism of the Trust Account and whether the reclamation fee is expected to be sufficient to cover operation and maintenance costs for the next fiscal year. We agree with Pennsylvania that analysis of long-term operational and maintenance costs at bond-forfeited legacy sites will help determine whether supplemental funding of the Trust Account is needed. The requirement that this additional information be included in the annual report will allow Pennsylvania to respond more effectively to changing conditions and supplement the account, as needed. These enhancements, in conjunction with other provisions in this chapter, satisfy the Federal regulatory requirement for States using alternative bonding systems to maintain

sufficient funds to fulfill reclamation obligations at bond-forfeited sites. Therefore, we are approving the change to 25 Pa. Code 86.17(e)(1).

Finding 4: 25 Pa. Code 86.162b. LRFGs

Pennsylvania added this section to chapter 86 to detail implementation of the LRFG program and a financial account to facilitate administration of these guarantees. The LRFG Account is a financial instrument used to underwrite LRFGs and financially assure qualified operators of their bonding obligations. The LRFG Account also serves to fund bioenergy crop bonding as authorized in section 86.162c (see *Finding 9*) and fund any remaining sum-certain financial guarantees from previous programs such as the CAP. Another use of the LRFG Account is to assure sufficient funds for reclamation liabilities are available should any bond forfeitures occur.

Section 86.162b imposes several limits on Pennsylvania in issuing financial guarantees; it converts existing financial guarantees previously issued by Pennsylvania into LRFGs subject to outlined limits; and it requires Pennsylvania to prepare a report no less frequently than every five years that analyzes the revenue and expenses of the account and evaluates the limits on financial guarantees. Additionally, section 86.162b establishes eligibility requirements for recipients of financial guarantees; requires the operator to pay annual premiums to Pennsylvania of 1.5 percent of the total amount of the financial guarantee; requires additional bonds or financial assurance if a postmining pollutional discharge develops; establishes procedures for bond forfeiture from operators who choose to obtain the financial guarantees; and establishes procedures for discontinuing the financial guarantee program.

OSMRE Finding: We have determined that section 86.162b is no less effective than the Federal regulations at 30 CFR 800.11(e). Subsections (a) through (d) of this section are a straightforward description of the LRFG Account as a mechanism for receiving and distributing funds associated with the financial guarantee program. Subsection (e) describes the uses of the monies in the account, including covering reclamation liabilities when bond forfeiture occurs and underwriting financial guarantees for bioenergy crop bonding under 25 Pa. Code 86.162c. These provisions aid in achieving the objectives of 30 CFR 800.11(e).

Subsection (f) imposes several limits on Pennsylvania in issuing financial guarantees. Pennsylvania may not issue

financial guarantees exceeding 50 percent of the required bond amount for the permit, and it may not issue guarantees to individual operators in excess of 30 percent of the funds in the account. Pennsylvania also may not issue guarantees to any operators when the total amount of outstanding guarantees exceeds the amount of money in the account divided by the historical rate of bond forfeiture plus a safety margin. The total program limit on financial guarantee amounts aids in assuring solvency of the overall fund. The noted 50 percent limit also enhances solvency by ensuring that operators post traditional performance bonds for 50 percent or more of the reclamation liabilities. These traditional performance bonds will provide a significant economic incentive for compliance with the reclamation plan. The program limits and financial incentives all help Pennsylvania in achieving the objectives of 30 CFR 800.11(e)(1) and (2).

Subsection (g) of this section converts existing financial guarantees previously issued by Pennsylvania into LRFGs. The LRFGs are subject to the operator, permit, and program limits described elsewhere in section 86.162b. The new alternative bonding system will be easier for Pennsylvania to manage by consolidating the previous financial guarantees under the LRFG program. Because Pennsylvania will subject these converted financial guarantees to the limits of subsection (f), the LRFG program will help to assure that the objectives of 30 CFR 800.11(e)(1) and (2) are met, for the same reasons described previously.

Subsection (h) of this section directs Pennsylvania to prepare a report no less frequently than every five years to analyze the revenue and expenses of the LRFG Account and evaluate the limits on financial guarantees. This report is independent of the annual Trust Account report previously discussed. Pennsylvania must submit the report to the Mining and Reclamation Advisory Board (tasked with advising Pennsylvania on all matters of surface mining and reclamation) and make the report available to the public. Subsection (h) requires that, if Pennsylvania changes the financial guarantee limits based on the report, it will publish a notice highlighting those changes in the *Pennsylvania Bulletin*. These reports and the analyses they require will strengthen Pennsylvania's capacity to assure the solvency of the alternative bonding system, as required by 30 CFR 800.11(e)(1), by revisiting the various program limits, as well as revenue and expenses, with the input of

both the Mining and Reclamation Advisory Board and the public.

Subsections (i) and (j) of this section authorize Pennsylvania to transfer interest and payments from the LRFG Account to the Trust Account, as described at 25 Pa Code 86.17. No new alternative bonding system sites will come into existence because Pennsylvania has transitioned to full-cost bonding. The interest transfer is intended to transition existing alternative bonding system sites to a full funded status for their long-term treatment obligations. Pennsylvania may only use funds in the Trust Account for treating postmining pollutional discharges at alternative bonding system sites. The transfer of funds from one account to another does not affect the overall solvency of Pennsylvania's alternative bonding system. However, a check and balance on these transfers has been included in subsection (j), whereby PADEP must seek input from the Mining and Reclamation Advisory Board prior to any funds transfer into the Trust Account from the LRFG Account. Together these provisions will aid in achieving the objectives of 30 CFR 800.11(e)(1).

Subsection (k) establishes eligibility requirements for those who choose to obtain the financial guarantees. This subsection requires that operators hold valid coal mining leases, satisfy the requirements of subsections 86.37(a)(8) to 86.37(a)(8)(11) and 86.37(a)(8)(16) (relating to correction of previous violations), have a record of making timely payments on previous financial guarantees, and have not failed to maintain proper bonds within the previous three years. Operators obtaining financial guarantees for the first time must demonstrate experience in mining and reclamation by having coal mining licenses for at least five years. Operators must also submit either a surety bond for the remaining portion of the reclamation liability or a letter of acceptance from a surety company. These eligibility requirements reduce the chances of an operator forfeiting a bond by screening out inexperienced operators or operators with uncorrected violation histories. In doing so, this subsection helps assure solvency of the LRFG Account, furthering the objectives of 30 CFR 800.11(e)(1).

Subsection (l) describes the requirements for applications for financial guarantees, which include descriptions of the environmental and safety hazards of the proposed site, the availability of coal reserves at the site, and any prior denials of surety coverage. These requirements will help Pennsylvania select sound investments

for financial guarantees and help assure the solvency of the LRFG Account, furthering the objectives of 30 CFR 800.11(e)(1).

Subsection (m) requires operators obtaining a financial guarantee to pay annual premiums to Pennsylvania of 1.5 percent of the total amount of the financial guarantee and imposes related requirements and limitations. This subsection authorizes Pennsylvania to use the annual premiums to fund reclamation activities if bond forfeitures occur or to transfer excess funds to the Trust Account. These provisions help assure the solvency of the LRFG Account, as required by 30 CFR 800.11(e)(1).

Subsection (n) authorizes Pennsylvania to adjust the payment percentage rate to assure the financial stability of the LRFG Account, after soliciting advice from the Mining and Reclamation Advisory Board. The annual premiums will supplement the funds in the Account from the transfer of Pennsylvania's previous financial guarantee program and the annual appropriations from the electricity tax. Together these provisions will aid in achieving the objectives of 30 CFR 800.11(e)(1).

Subsection (o) requires Pennsylvania to reduce or release financial guarantees from the previous CAP before other obligations, followed by financial guarantees from the proposed LRFG program, and finally remaining performance bonds from the operator. By holding onto the remaining performance bonds until after releasing guarantees under the LRFG program, Pennsylvania will maintain the substantial economic incentive for the operator to fulfill its reclamation obligations as required in 30 CFR 800.11(e)(2).

Subsection (p) requires that when a postmining pollutional discharge develops, the operator must provide Pennsylvania with a separate bond or financial assurance to cover long-term treatment costs. The requirement for separate bond mechanisms for long-term treatment of pollutional discharges is no less effective than the Federal regulations at 30 CFR 800.40(c)(3), which stipulate that no bond can be fully released until the operator meets all reclamation requirements. By helping to ensure coverage of all reclamation liability, including the often late-arising liability associated with discovery of pollutional discharges, it is also no less stringent than section 509(a) of SMCRA, 30 U.S.C. 1259(a), which requires a bond "sufficient to assure the completion of the reclamation plan if

the work had to be performed by the regulatory authority"

Subsections (q) through (s) establish the procedures for bond forfeiture under the LRFG program. In such cases, Pennsylvania will declare forfeiture of the financial guarantee and the operator's other performance bonds and use the money to complete reclamation of the site. The forfeiture declaration will not discharge the operator's obligation to meet other requirements under the Pennsylvania regulatory program. These procedures are identical to the Federal regulation at 30 CFR 800.50 and are therefore as effective as those regulations.

Subsection (t) provides that Pennsylvania may suspend issuance of financial guarantees when the number of participating permits declared forfeit equals the number of participating permits multiplied by the historical forfeiture rate, plus a margin of safety. This subsection also provides that Pennsylvania may resume the financial guarantee program after evaluating and approving adequate funding levels with advice from the Mining and Reclamation Advisory Board. Subsection (u) provides that Pennsylvania will discontinue issuance of financial guarantees if 25 percent or more of the outstanding bond obligations for LRFGs are declared forfeit under section 86.181. Subsection (v) provides that Pennsylvania will not approve additional financial guarantees after the program is discontinued and that outstanding financial guarantees will remain in effect until released. We have determined that subsections (t), (u), and (v) have no direct Federal counterpart, but because they operate as additional mechanisms to promote solvency of the LRFG Account, we deem them no less effective than the Federal regulations at 30 CFR 800.11(e). The ability to suspend or discontinue issuance of financial guarantees to protect the solvency of the fund is consistent with the Federal regulations at 30 CFR 800.11(e)(1).

Section 86.162b includes numerous provisions implementing the LRFG Account and ensuring orderly program administration. Subsections (a) through (v) detail these additions and, as described in this *Finding*, are consistent with SMCRA and achieve the objectives of 30 CFR 800.11(e). For all these reasons, we are approving the addition of section 86.162b.

Finding 5: 25 Pa. Code 86.165. Failure To Maintain Proper Bond

Pennsylvania revised this section to add a provision that if an operator fails to pay annual premiums for LRFGs as

required by section 86.162b, then Pennsylvania will issue a notice of violation. If the operator does not correct the violation within 15 days of the notice, Pennsylvania will issue a cessation order.

OSMRE Finding: We have determined that the provision in this section does not have a Federal counterpart. However, the provision aids Pennsylvania in assuring LRFG Account solvency, and we deem it no less effective than the Federal regulation at 30 CFR 800.11(e)(1). Therefore, we are approving the change to 25 Pa. Code 86.165(a).

Finding 6: 25 Pa. Code 86.187. Use of Money

Pennsylvania revised this section to remove a reference to sum-certain financial guarantees under the predecessor program and replace it with a reference to LRFGs as implemented by section 86.162b. This replacement allows Pennsylvania to deposit fees collected for the LRFGs into the Trust Account. In conjunction with section 86.162b, the changes in section 86.187 referencing the LRFG allow the transfer of fees from the CAP. This section also changes a citation to PASMCR to reflect the addition of 52 P.S. 1396.19b and changes ‘monies’ to ‘moneys.’

OSMRE Finding: We have determined that the reference to the LRFGs does not have a direct Federal counterpart. However, it accommodates the change from the previous CAP to the new LRFG program approved in *Finding 4* and provides an additional mechanism to ensure solvency, consistent with 30 CFR 800.11(e). The other changes are non-substantive and require no findings. Therefore, we are approving the changes to 25 Pa. Code 86.187(a) and (a)(iii).

Provisions on Bioenergy Crop Bonding

Finding 7: Subsection 4(a)(2)(C) of PASMCR

Pennsylvania, through Act 95, revised section 4 of PASMCR by adding a sentence at the end of subsection 4(a)(2)(C) directing PADEP to encourage and promote the use of various bioenergy crops, including switchgrass, camelina, and canola for the revegetation of surface mining sites and providing that Pennsylvania will consider such sites to have a postmining land use of cropland.

OSMRE Finding: We have determined that these changes are no less stringent than SMCRA and no less effective than its implementing regulations. Section 515(b)(19) of SMCRA (30 U.S.C. 1265(b)(19)) states that all surface mining operations must establish a

diverse, effective, and permanent vegetative cover of a native variety, except that introduced species may be used where desirable and necessary to achieve the approved postmining land use. Further, Section 515(b)(20) of SMCRA (30 U.S.C. 1265(b)(20)) states that when the regulatory authority approves an agricultural postmining land use, the authority may grant exceptions to the provisions of section 515(b)(19). Directing PADEP to encourage and promote the use of bioenergy fuels is consistent with these statutory provisions. We conclude that Pennsylvania’s proposal to promote agricultural postmining land use in the form of bioenergy crops is no less stringent than SMCRA, and we are approving the changes to section 4(a)(2)(C) of PASMCR.

Finding 8: Section 4.14 of PASMCR

Pennsylvania revised PASMCR by adding section 4.14, which directs PADEP to make available sum-certain financial guarantees to cover Stage III reclamation liability for remining sites revegetated with bioenergy crops, to the extent that funds are available for the financial guarantees. Pennsylvania describes the implementation of the financial guarantees in additional statutory changes and in new chapters of the Pennsylvania Code.

OSMRE Finding: We have determined that this section has no direct Federal counterpart but is no less effective than the Federal regulations at 30 CFR 800.13 (regarding the duration of performance bond liability), 800.30 (governing approval of replacement bonds), and 816.116 (providing standards for successful revegetation). The effectiveness of this statutory provision is enhanced by its operating in conjunction with the proposed regulations in subsection 86.162c, which implement the bioenergy provisions of Act 95, as discussed in *Finding 9*. Therefore, we are approving the addition of section 4.14 of PASMCR.

Finding 9: 25 Pa. Code 86.162c

Pennsylvania added this section to chapter 86 of its administrative code, providing for the issuance of financial guarantees in the form of bioenergy crop bonding. Section 86.162c would provide operators at remining sites with an incentive to plant bioenergy crops, consistent with section 4.14 of PASMCR. Pennsylvania releases bonds in three stages. Stage 1 release occurs after the site has been regraded to the approximate original contour and drainage control installation has occurred. Stage 2 release occurs after

successful revegetation of the permit area. Stage 3 release occurs after final completion of the reclamation plan and a minimum of five years following Stage 2 bond release. The proposed bioenergy crop bond would release the operator’s Stage 3 bonds and replace them with a financial guarantee.

Paragraph (a) describes the eligibility requirements for the bond. Operators may apply for the bioenergy crop bonding at remining sites after Stage 2 bond release and after demonstrating successful growth of bioenergy crops including switchgrass, camelina, and canola. Operators may not apply for bioenergy crop bonding if water treatment liability has been triggered under Pennsylvania’s regulations on remining areas with pollutional discharges.

Paragraph (b) describes the application requirements for the bond. Applications must include verification that the permitted area has achieved Stage 2 bond release, demonstration that the operator is growing bioenergy crops at an acceptable yield, demonstration that temporary structures have been reclaimed, that there are no postmining pollutional discharges or that all liabilities for discharges are covered with a full-cost bond, and a statement that the operator intends to apply for release of bioenergy crop bonding in a timely manner.

Paragraphs (c) through (f) establish the procedures for approving bioenergy crop bonding. Only after approval may Pennsylvania release the operator’s existing Stage 3 bond. Bioenergy crop bonding cannot exceed five years and will expire within 120 days of the expiration of the liability period. If final bond release does not occur until after expiration of bioenergy crop bonding, replacement bioenergy crop bonding is required.

OSMRE Finding: We have determined that this section has no direct Federal counterpart. However, after considering the probable effects of this section on the overall Pennsylvania program, we find that this section is no less effective than the Federal regulations, in particular, 30 CFR 800.11(e)(2) (requiring incentives for reclamation compliance), 800.13 (regarding the duration of performance bond liability), 800.30 (governing approval of replacement bonds), and 816.116 (providing standards for successful revegetation).

Subsection 86.162c implements the statutory provisions in section 4.14 of PASMCR, which establishes bioenergy crop bonding as a financial incentive to encourage the growth of bioenergy crops at remining sites. To provide a

substantial incentive, Pennsylvania is providing full-cost guarantees to replace the operator's Stage 3 liability. We conclude this incentive is no less effective than the Federal regulations at 30 CFR 800.11(e)(2) requiring substantial incentives for reclamation compliance. Because the full cost of reclamation is covered by this guarantee, the bond replacement is no less effective than the Federal regulations at 30 CFR 800.30. Further, bioenergy crop bonding liabilities are funded by separate general appropriations. Therefore, forfeiture and reclamation costs at bioenergy crop bonding sites will not affect the overall funding levels of the Pennsylvania regulatory program. The requirement for Stage 2 bond release to occur before approving bioenergy crop bonding and the restriction against long-term pollutional discharges in the program further limit Pennsylvania's risk and ensure that the operator has already committed to bioenergy crop growth at the site.

We conclude the minimum five-year liability period for bioenergy crop bonding is no less effective than 30 CFR 816.116(c)(2), which requires that sites which receive at least 26 inches of annual average precipitation have liability periods of five years, except in the case of re-mining sites, where the period of liability is two years. Further, subsection 816.116(b)(5) of the Federal regulations requires vegetation at re-mining sites to match or exceed the previous extent of ground cover and be adequate to control erosion. The density of vegetation in a cropland safely meets these standards. For these reasons, we are approving section 86.162c.

Minor Statutory and Regulatory Changes

There were numerous non-substantive changes as to which OSMRE makes no findings. These changes may be found in PADEP's July 26, 2017, letter (Administrative Record No. PA 900.00) (pp. 3 to 29).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and did not receive any during the comment period.

Federal Agency Comments

On August 7, 2017, 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 900.01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain 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. However, on August 7, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. PA 900.01). The EPA responded on December 11, 2017 (Administrative Record No. PA 900.03) with no comments on the amendment.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 7, 2017, we requested comments on the Pennsylvania amendment (Administrative Record No. 900.01). Neither the SHPO nor ACHP responded with any comments.

V. OSMRE's Decision

Based on the above findings, we are approving the Pennsylvania amendment sent to us on July 26, 2017 (Administrative Record No. PA 900.00). To implement this decision, we are amending the Federal regulations at 30 CFR part 938 that codify decisions concerning the Pennsylvania program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on

an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review. 13563—Improving Regulation and Regulatory Review. 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M–94–3), the approval of State program amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** notice meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** notice and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the program amendment that Pennsylvania drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to "grant the States the maximum administrative discretion possible" with respect to Federal statutes and regulations administered by the States. Pennsylvania, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the Pennsylvania State program submitted and drafted by the State, and

thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. The basis for this determination is that our decision on the Pennsylvania program does not include Indian lands, as defined by SMCRA, or regulation of activities on Indian lands. Indian lands are regulated independently under the applicable Federal program. The Department’s consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking 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 significant energy action under the definition in Executive Order 13211, a

Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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 corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director, North Atlantic-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 in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* July 26, 2017	* August 8, 2024	* PASMCR sec. 4(d), 19.2 Authorizing LRFG program; PASMCR sec. 4(a)(2)(C), 4.14, authorizing bioenergy crop bonding; PASMCR sec. 3 definitions, 18(a.1), 19, minor changes; 25 Pa. Code 86.17(e)(2), 86.162b, 86.165(a) and (a)(iii), implementing the LRFG program; 25 Pa. Code 86.162c, implementing the bioenergy crop bonding program; 25 Pa. Code 86.1 definition of <i>Acts</i> , 86.6(a), 86.12(a)(3), 86.121, 86.155, 86.159(k)(2)(A), 86.182(h)(2), 86.185, 86.232 definition of <i>coal mining laws</i> , 86.252 definition of <i>Act</i> , 86.358(a)(3), 87.1 definition of <i>SMCRA</i> , 87.205(b), 88.482 definition of <i>operator</i> , 88.505(b), 89.5 definition of <i>operator</i> , and 90.305(b), citation changes and other minor changes.

[FR Doc. 2024–17336 Filed 8–7–24; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–170–FOR; Docket ID: OSM–2108–0007; S1D1S SS08011000 SX064A000 234S180110 S2D2S SS08011000 SX064A000 23XS501520]

Pennsylvania Regulatory Program

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

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving a request from Pennsylvania for the removal of a required amendment to the Pennsylvania regulatory program (hereinafter, the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required amendment directed Pennsylvania to submit regulations requiring that siltation structures (e.g., sedimentation ponds) not be removed any sooner than two years after the last augmented seeding.

DATES: The effective date is September 9, 2024.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Acting Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (412) 937–2827. Email: bowens@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Pennsylvania Program

Subject to OSMRE oversight, 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, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). Based on 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 August 9, 2018 (Administrative Record No. PA 903.00), Pennsylvania requested removal of a required amendment from its program. This amendment, 30 CFR 938.16(rrr), requires Pennsylvania to amend three subsections in title 25 of the Pennsylvania Code (Pa. Code), specifically subsections 87.108(c), *Hydrologic balance: sedimentation ponds* (applicable to surface coal mining), 89.24(c), *Performance Standards: Sedimentation ponds* (applicable to underground coal mining), and 90.108(c), *Hydrologic balance: sedimentation ponds* (applicable to coal refuse disposal sites), or otherwise to amend its program to require, without exception, that sedimentation ponds not be removed sooner than two years after the last augmented seeding.

We gave notice of receipt of Pennsylvania's August 9, 2018, request in the May 1, 2019, **Federal Register** (84 FR 18435). In the same notice, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none was requested. The public comment period ended on May 31, 2019. We received no comments.

III. OSMRE's Findings

We are approving Pennsylvania's request to eliminate the required amendment as described below and approving language we previously rejected as being less effective than the Federal regulations. The following are findings we made concerning Pennsylvania's request under SMCRA at 30 U.S.C. 1253, *State Programs*, and the Federal regulations at 30 CFR 732.15, *Criteria for approval or disapproval of State programs*, and 732.17, *State program amendments*.

A. Pennsylvania's Rationale

With this request, Pennsylvania presents a number of reasons why the required amendment should be removed and why previously submitted language revising 25 Pa. Code 87.108(c)—

Sedimentation Ponds: Surface Coal Mines; 89.24(c)—Sedimentation Ponds: Underground Mines and Coal Preparation Facilities; and 90.108(c)—Sedimentation Ponds: Coal Refuse Disposal should be approved. The previously submitted revised language required that sedimentation ponds be maintained until the disturbed area has been stabilized and revegetated and removal is approved by the Department, and that the ponds may not be removed sooner than 2 years after the last augmented seeding unless the Department finds that the disturbed area has been sufficiently revegetated and stabilized.

1. Use of Best Technology Currently Available (BTCA)

In support of removing the required amendment and accepting the revised language, Pennsylvania identifies the 1985 court decision in *In re Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519 (D.D.C.), as well as our 1986 rule suspending 30 CFR 816.46(b)(2) and 817.46(b)(2), and reasons that 30 CFR 816.46(b)(1) now governs sediment control. Pennsylvania also notes that when a pond is removed prior to two years after the last augmented seeding, its program requires that sediment control measures that have been determined by the Pennsylvania Department of Environmental Protection (PADEP) to constitute BTCA must at that point be in place. 25 Pa. Code 87.108(i), 90.108(j). Pennsylvania also notes that its program establishes vegetation standards (25 Pa. Code 87.147–87.153, 87.155, 87.156, 89.86, 90.151–90.157, 90.159, and 90.160) as the BTCA. For example, 25 Pa. Code 87.147(b) requires the establishment of “a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area. . . .”

Pennsylvania's submission also references Montana and Ohio as successfully amending their programs and receiving OSMRE approval to allow removal of sedimentation ponds sooner than two years after last augmented seeding if replaced by BTCA. See 55 FR 19727 (May 11, 1990) (regarding the Montana program); 59 FR 58778 (November 15, 1994) (regarding the Ohio program).

2. Approval Required Prior to Removal

In support of removing the required amendment and accepting the revised language, Pennsylvania also indicates that 25 Pa. Code 87.108(c), 89.24(c), and