

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 Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

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. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon 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), of 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.
- 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 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 counterpart 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 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 2006.

Allen D. Klein,

Director, Western Region.

[FR Doc. E6–12203 Filed 7–28–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–148–FOR]

Pennsylvania Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed 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 proposed amendment (Administrative Record Number PA 887.00) was submitted to clarify the requirements for shaft and slope development and other issues relating to blasting at a mine site.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time August 30, 2006. If requested, we will hold a public hearing on August 25, 2006. We will accept requests to speak until 4 p.m., local time on August 15, 2006.

ADDRESSES: You may submit comments, identified by “PA–148–FOR” by any of the following methods:

- *E-mail:* grieger@osmre.gov.
- *Mail/Hand Delivery:* George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101, Telephone: (717) 782–4036.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number "PA-148-FOR" for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Pennsylvania program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Pittsburgh Field Division Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Pittsburgh Field Division's Harrisburg Office. In addition, you may receive a copy of the submission during regular business hours at the following location:

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782-4036. E-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. 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 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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including

the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated June 8, 2006 (Administrative Record Number PA 887.00), the Pennsylvania Department of Environmental Protection (PADEP) sent OSM a program amendment to address blasting for the development of shafts for underground mines and to make administrative changes to regulations relating to blasting in 25 Pa. Code Chapters 77, 87, 88, 89 and 210. However, by letter dated July 5, 2006 (Administrative Record Number PA 887.02), PADEP withdrew the provisions pertaining to industrial mineral underground mining provisions at Chapter 77 since they are not coal related. Therefore, only those changes at 25 Pa. Code Chapters 87, 88, 89 and 210 will be addressed in this rule. The proposed changes clarify that the use of explosives in connection with the construction of a mine opening for an underground coal mine is a surface mining activity subject to the applicable requirements in Chapters 87 or 88 and that the person conducting the blasting activity must possess a blaster's license. In addition, PADEP is proposing changes to the scheduling requirements applicable to the use of explosives for constructing openings for coal and industrial mineral underground mines and changes to the requirements for protective measures to be taken when surface coal mine blasting is in proximity to a public highway or an entrance to a mine. Finally, a category for mine opening blasting is being added to the classifications of blaster's licenses.

The full text of the document is available for you to read at the location listed above under **ADDRESSES**. A summary of the proposed changes, as provided by Pennsylvania in the Preamble of their proposed rule (Administrative Record Number PA 887.00), are as follows:

25 Pa. Code 210.11. Definition.

PADEP is proposing to add a definition for the term "mine opening blasting" to 25 Pa. Code 210.11 as follows: "Mine opening blasting—Blasting conducted for the purpose of constructing a shaft, slope, drift, or tunnel mine opening for an underground mine, either operating or under development, from the surface

down to the point where the mine opening connects with the mineral strata to be or being extracted."

25 Pa. Code 87.1, 88.1, and 89.5. Definitions.

PADEP is proposing to add a definition for the term "mine opening blasting" to 25 Pa. Code 87.1, 88.1, and 89.5 as follows: "Mine opening blasting—Blasting conducted for the purpose of constructing a shaft, slope, drift, or tunnel mine opening for an underground mine, either operating or under development, from the surface down to the point where the mine opening connects with the coal seam to be or being extracted."

25 Pa. Code 87.124. Use of explosives: general requirements.

PADEP is proposing to change subsection (b) to correct the reference from "87.125" to "87.126 (relating to use of explosives: public notice of blasting schedules)."

As proposed, subsection (b) reads:

Blasts that use more than 5 pounds of explosive or blasting agents shall be conducted according to the schedule required by section 87.126 (relating to use of explosives: public notice of blasting schedules).

25 Pa. Code 87.126. Use of explosives: public notice of blasting schedule.

PADEP is proposing to delete the following phrase at subsection (b)(2)(ii), "each period may not exceed 4 hours".

As proposed, subsection (b)(2)(ii) reads:

Dates and time periods when explosives are to be detonated.

25 Pa. Code 87.127. Use of explosives: surface blasting requirements.

PADEP is proposing to change subsection (a) by adding the following:

* * * except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsections (e) or (n) if consented to, in writing, by the structure owner and lessee, if leased to another party.

As proposed, subsection (a) reads:

Blasting shall be conducted between sunrise and sunset, at times announced in the blasting schedule, except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting

conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsections (e) or (n) if consented to, in writing, by the structure owner and lessee, if leased to another party.

PADEP is proposing to change subsection (b) by adding the phrase "or vibration limits," and by deleting the term "excessive noise" and replacing it with the phrase "the adverse affects of vibration or safety hazards."

As proposed, subsection (b) reads:

The Department may specify more restrictive time periods or vibration limits, based on public requests or other relevant information, according to the need to adequately protect the public from the adverse affects of vibration or safety hazards.

PADEP is proposing to change subsection (e) by deleting the following phrases, "unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. The lessee may sign a waiver", and replacing them with "unless the structure is located on the permit area when the structure owner and lessee, if leased to another party, have each signed a."

As proposed, subsection (e) reads:

An airblast shall be controlled so that it does not exceed the noise level specified in this subsection at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is located on the permit area when the structure owner and lessee, if leased to another party, have each signed a waiver relieving the operator from meeting the airblast limitations of this subsection.

PADEP is proposing to change subsection (e)(1) to delete the following language, "Lower frequency limit of measuring system in Hz (k 3dB) Maximum level (dB) 0.1 Hz or lower flat response 134, peak 2 Hz or lower flat response" and "peak 6 Hz or lower flat response 129, peak c-weighted, slow response 105 peak dBC.", and insert the following phrase: "is 133 dBL."

As proposed, subsection (e)(1) reads:

The maximum allowable noise level is 133 dBL.

PADEP is proposing to change subsection (f)(1) to lower the distance from a blasting area where an operator must barricade and guard public highways and entrances to the operation from 1,000 feet to 800 feet. PADEP is also proposing to insert the following language:

The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at

least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.
- (iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:
 - (A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.
 - (B) Adjusting blast design parameters including:
 - (I) The hole's diameter.
 - (II) The number of rows.
 - (III) The number of holes.
 - (IV) The amount and type of explosive.
 - (V) The burden and spacing.
 - (VI) The amount and type of stemming.
 - (VII) The powder factor.

As proposed, subsection (f)(1) reads:

Public highways and entrances to the operation shall be barricaded and guarded by the operator if the highways and entrances to the operations are located within 800 feet of a point where a blast is about to be fired. The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.
- (iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:
 - (A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.
 - (B) Adjusting blast design parameters including:
 - (I) The hole's diameter.
 - (II) The number of rows.
 - (III) The number of holes.
 - (IV) The amount and type of explosive.
 - (VI) The amount and type of stemming.
 - (VII) The powder factor.

PADEP is proposing to delete subsection (l) in its entirety. Subsection (l) currently reads:

The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the Department if the peak particle velocity of 1 inch per second required in § 87.126 (relating to use of explosives: public notice of blasting schedule) would not be exceeded.

25 Pa. Code 87.129. Use of explosives: records of blasting operations.

PADEP is proposing to change subsection (4) by adding the phrase: "identification of and the"

As proposed subsection (4) reads:

The identification of and the direction and distance, in feet, to the nearest dwelling, public building, school, church, commercial or institutional building or other structure.

25 Pa. Code 88.135. Blasting: surface blasting requirements.

PADEP proposes to add the following language to subsection (a):

* * * except that mine opening blasting conducted after the second blast for that mine opening may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsection (h) if consented to, in writing, by the structure owner and lessee, if leased to another party.

As proposed, subsection (a) reads:

Blasting shall be conducted between sunrise and sunset, except that mine opening blasting conducted after the second blast for that mine opening may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsection (h) if consented to, in writing, by the structure owner and lessee, if leased to another party.

PADEP is proposing to change subsection (b) by adding the following phrases: "or vibration limits," and "from the adverse affects of vibration or safety hazards." As proposed, subsection (b) reads:

The Department may specify more restrictive time periods or vibration limits, based on other relevant information, according to the need to adequately protect the public from the adverse affects of vibration or safety hazards.

PADEP is proposing to change subsection (f)(1) by lowering the distance from a blasting area where an operator must barricade and guard public highways and entrances to the operation from 1,000 feet to 800 feet and by adding the following:

The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.

(iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:

(A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.

(B) Adjusting blast design parameters including:

(I) The hole's diameter.

(II) The number of rows.

(III) The number of holes.

(IV) The amount and type of explosive.

(V) The burden and spacing.

(VI) The amount and type of stemming.

(VII) The powder factor.

As proposed, subsection (f)(1) reads:

Public highways and entrances to the operation shall be barricaded and guarded by the operator if the highways and entrances to the operations are located within 800 feet of a point where a blast is about to be fired. The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

(i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.

(ii) Using mats to suppress fly rock.

(iii) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:

(A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.

(B) Adjusting blast design parameters including:

(I) The hole's diameter.

(II) The number of rows.

(III) The number of holes.

(IV) The amount and type of explosive.

(V) The burden and spacing.

(VI) The amount and type of stemming.

(VII) The powder factor.

PADEP is proposing to change subsection (h) to delete the phrase, "the maximum peak particle velocity may not exceed 2 inches per second" and add the phrase, "* * * the blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1 * * *" PADEP is further proposing to change the last sentence of this subsection by removing the phrase, "130 DB linear at a frequency 6Hz or lower" and replacing it with "133 dBL." As proposed, subsection (h) reads:

In all blasting operations, the blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1 at the location of any dwelling, public building, school, church or commercial or institutional building. Peak particle velocities shall be recorded in three mutually perpendicular

directions; longitudinal, transverse and vertical. The maximum peak particle velocity shall be the largest of any of three measurements. The Department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors. The sound pressure level may not exceed 133 dBL.

PADEP is proposing to change subsection (i) by adding the phrase "and sound pressure." As proposed subsection (i) reads:

The maximum peak particle velocity and sound pressure limitations of this section do not apply at the following locations: * * *

PADEP is proposing to remove subsection (l) in its entirety. This subsection currently reads:

The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Department if the peak particle velocity of 2 inches per second would not be exceeded.

25 Pa. Code 88.493. Minimum environmental protection performance standards.

PADEP is proposing to change subsection (7)(i) by replacing the phrase "initial rounds of slopes, shafts and tunnels" with "mine opening blasting."

As proposed, subsection (7)(i) reads:

A person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting shall conduct the activities in compliance with sections 88.45 and 88.134-88.137.

25 Pa. Code 89.62. Use of explosives.

PADEP is proposing to change this section to replace the words "initial rounds of slopes, shafts and tunnels" with "mine opening blasting."

As proposed, 25 Pa. Code 89.62 reads:

Each person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting, shall conduct the activities in compliance with Chapter 87 (relating to surface mining of coal).

25 Pa. Code 210.12. Scope.

PADEP is proposing to change this section to add the phrase: "Except for persons engaging in mine opening blasting."

As proposed, 25 Pa. Code 210.12 reads:

This chapter applies to persons engaging in the detonation of explosives within this Commonwealth. Except for persons engaging in mine opening blasting, this chapter does not apply to persons authorized to detonate explosives or to supervise blasting activities under: * * *

25 Pa. Code 210.17. Issuance and renewal of licenses.

PADEP is proposing to change subsection (a) to add the phrase "mine opening blasting" at two places.

As proposed, this section reads:

A blaster's license is issued for a specific classification of blasting activities. The classifications will be determined by the Department and may include general blasting (which includes all classifications except demolition, mine opening blasting and underground noncoal mining), trenching and construction, seismic and pole line work, well perforation, surface mining, underground noncoal mining, mine opening blasting, industrial, limited and demolition.

III. Public Comment Procedures

In accordance with 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Pittsburgh Field Division's Harrisburg Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: PA-148-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Pittsburgh Field Division's Harrisburg Office at (717) 782-4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will

make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time on August 15, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. 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 (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) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such 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 Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal 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. 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 governmental 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 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 counterpart 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.

Dated: July 6, 2006.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E6-12186 Filed 7-28-06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY-035-FOR]

Wyoming Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming regulatory program (hereinafter, "the Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In lieu of changing the proposed rule language, as we suggested in our issue letter, Wyoming has submitted additional explanatory information about its self-bonding rules (Rule Package 1-U) with

respect to the inclusion of foreign assets as part of a company's tangible net worth and the eligibility of foreign companies to self-bond or guarantee a self-bond. We are seeking input on whether the Wyoming explanation provides sufficient basis for us to approve the proposed amendment.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. August 15, 2006.

ADDRESSES: You may submit comments, identified by "SATS No. WY-035-FOR" by any of the following methods:

- *E-mail:* JFleischman@osmre.gov.

Include "SATS No. WY-035-FOR" in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm 1018, Casper, Wyoming 82601-1018, 307/261-6550.

- *Fax:* 307/261-6552.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and "SATS No. WY-035-FOR." For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeffrey W. Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601-1018, 307/261-6550, E-mail: JFleischman@osmre.gov.

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, 307/777-7046, E-mail: jcorra.state.wy.us.

FOR FURTHER INFORMATION CONTACT:

Jeffrey W. Fleischman, Telephone: 307/

261-6550; E-mail:

JFleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures

I. Background on the Wyoming 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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.11, 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated March 7, 2006, Wyoming submitted an amendment to its program proposing revisions to and additions of rules concerning self-bonding requirements (Administrative Record No. WY-40-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

We announced receipt of the proposed amendment in the April 21, 2006, **Federal Register** (71 FR 20604), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. WY-40-07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 22, 2006. We received comments from two industry groups and one Federal agency.

During our review of the amendment, we identified concerns relating to the