

The Commission recognizes the concern expressed in comments regarding the use of TACs. Additionally, the Commission also recognizes the potential benefit of a TAC, particularly when addressing a complex or technical regulation. While the Commission agrees with those comments suggesting a regulation may not be necessary, the Commission will consider drafting a policy guiding the development of a TAC, member selection, and meeting rules. The Commission anticipates that a TAC policy will be developed during 2011. The process for developing a TAC policy will be consistent with the NIGC's Tribal Consultation policy.

B. Communication Policy

The NOI asked whether the NIGC should consider developing a regulation or include as part of a regulation a process for determining how it communicates with Tribes. The NOI noted that NIGC communicates directly with the Tribal Gaming Regulatory Agency (TGRA) or Tribal Gaming Commission (TGC) as well as directly with the tribal government. The NOI asked whether the NIGC should consider promulgating a regulation or policy establishing a default method of communication unless otherwise directed by tribal resolution.

Many comments recommended that the Commission should not consider adopting a universal standard for communicating with Tribes. Tribes noted the variety in government structures and methods used by Tribes when taking official action. However, Tribes also noted the need for more effective communication with all affected parties, including the elected government officials, TGC, TGRA and the gaming operation. While the Commission agrees with those comments suggesting a regulation may not be necessary, the Commission will consider drafting a policy guiding how the Commission communicates with Tribes, their gaming regulatory bodies, and the gaming operation. This Commission anticipates that a policy will be developed over the course of the regulatory review process outlined above. The process for developing a Communication policy will be consistent with NIGC's Tribal Consultation policy.

C. Other Regulations

During this review process, the Commission attempted to identify those regulations identified by Tribes and/or the Commission in most need of review. However, the Commission reserves the right to review other regulations if needed throughout this review process.

Review of regulations not specifically identified in this Notice will be reviewed utilizing the process described in Section IIB of this Notice.

Authority: 25 U.S.C. 2706(b)(10); E.O. 13175.

Dated: March 30, 2011, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011-7912 Filed 4-1-11; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

RIN 1219-AB73

Pattern of Violations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the comment period on the proposed rule addressing Pattern of Violations (POV). This extension gives commenters additional time to review and comment on the proposed rule.

DATES: All comments must be received or postmarked by midnight Eastern Daylight Savings Time on April 18, 2011.

ADDRESSES: Submit comments by any of the following methods. Comments must be identified with "RIN 1219-AB73" in the subject line of the message.

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Electronic mail:* zzMSHA-comments@dol.gov.

- *Facsimile:* 202-693-9441.

- *Regular Mail or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Courier must sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Chief, Regulatory Development Division, Office of Standards, Regulations, and Variances, MSHA, at fontaine.roslyn@dol.gov (e-mail); 202-693-9440 (voice); or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

Availability of Information

View Public Comments: MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at <http://www.msha.gov/REGS/Comments/2011-2255/POV.asp> or at <http://www.regulations.gov>. Review comments in person at MSHA, Office of Standards, Regulations, and Variances, at the address in the **ADDRESSES** section above.

E-mail notification: To subscribe to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**, go to: <http://www.msha.gov/subscriptions/subscribe.aspx>.

Extension of Comment Period and Request for Comments

On February 2, 2011 (76 FR 5719), MSHA published a proposed rule on Pattern of Violations (POV). In response to requests from interested parties, MSHA is extending the comment period from April 4, 2011, to April 18, 2011. MSHA solicits comments from the mining community on all aspects of the proposed rule. The proposed rule is available on MSHA's Web site at <http://www.msha.gov/REGS/FEDREG/PROPOSED/2011PROP/2011-2255.pdf>.

Dated: March 30, 2011.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2011-7975 Filed 4-1-11; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA-156-FOR; Docket ID: OSM 2010-0004]

Pennsylvania Regulatory Program

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

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: We are reopening the public comment period related to an amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment is in response to fourteen required program amendments and the remaining financial guarantee program. The

comment period is being extended to incorporate subsequent information that we received on two occasions from Pennsylvania. Taken together, the submissions specifically address fifteen required program amendments and the remaining financial guarantee program. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations. 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 May 4, 2011. If requested, we will hold a public hearing on April 29, 2011. We will accept requests to speak until 4 p.m., local time on April 19, 2011.

ADDRESSES: You may submit comments, identified by "PA-156-FOR; Docket ID: OSM-2010-0004" by either of the following two methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM-2010-0004. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions.

Mail/Hand Delivery/Courier: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at <http://www.regulations.gov>, information may also 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 OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036, E-mail: grieger@osmre.gov.
Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of

Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5015, E-mail: tcallaghan@state.pa.us.

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 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, 938.13, 938.15, and 938.16.

II. Description of the Amendment

Original Submission: By letter dated March 17, 2010, Administrative Record Number 888.00, Pennsylvania sent us an amendment to its program, under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania's submittal, consisting of proposed regulatory/rule changes, was intended to address fourteen required amendments found at 30 CFR 938.16(rr), (tt), (uu), (vv), (ww), (xx), (zz), (aaa), (ccc), (iii), (jjj), (nnn), (ppp), and (ttt). It was also intended to address a partial disapproval of a 1998 submission that included regulations about re-mining financial guarantees. The disapproval is codified at 30 CFR 938.12(c)(3).

First Subsequent Submission: By letter dated September 14, 2010, Administrative Record Number 844.23, Pennsylvania sent us an amendment to its program under SMCRA that included

an "effective as" demonstration for: (1) eight of the required amendments mentioned above—30 CFR 938.16(rr) (tt), (uu), (vv), (ww), (xx), (zz), and (aaa); and (2) one required amendment not previously addressed (yy). It also included revised guidance documents related to compliance/enforcement procedures, alternate enforcement, and coal and industrial mineral mining inspections. Reference documents were also included but are not part of this amendment. We are now incorporating this submission into this amendment.

Second Subsequent Submission: By letter dated November 16, 2010, Administrative Record No. 888.07, Pennsylvania sent us an amendment to its program under SMCRA to include the final-form rulemaking language that addressed the fourteen amendments mentioned above.

The full text of the program amendment is available for you to read at the locations listed above under

ADDRESSES. A summary of the submission follows.

Required Amendments at 30 CFR 938.16: The 15 required amendments at 30 CFR 938.16 require Pennsylvania to submit proposed amendments to:

(rr) Section 86.36(c) to require permit denial for unabated violations of any Federal or State program under SMCRA, without the three-year limitation.

(tt) Section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) Section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) Section 86.37(a) to include language that would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) Sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) Section 86.37(c) to require that the regulatory authority's reconsideration of its decision to approve the permit include a review of information, updated for the period

from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(yy) Section 86.43 to require the regulatory authority to review the circumstances under which a permit was issued whenever it has reason to believe that the permit may have been improvidently issued.

(zz) Section 86.62(b)(2)(ii) to correct the cross-reference to section 86.63 with a reference to section 86.212(c).

(aaa) Sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for such permit.

(ccc) Section 86.133(f) to require that exploration on areas designated as unsuitable for mining shall be subject to permitting requirements no less effective than the Federal regulations at 30 CFR 772.12.

(iii) Section 87.112(c) and 89.111(c) to require a seismic safety factor of at least 1.2 for all impoundments that meet the criteria of 30 CFR 77.216(a) or are located where failure could cause loss of life or serious property damage.

(jjj) Section 90.112(c)(2) to require that all impounding structures that meet the criteria of 30 CFR 77.216(a) and are either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway capacity and/or storage capacity to safely pass or control the runoff from the 6-hour PMP or greater precipitation event.

(nnn) Section 86.159(1)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

(ppp) Section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(ttt) Sections 88.321 and 90.133, or otherwise amend its program to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

Pennsylvania Response to Required Amendments at 30 CFR 938.16: Pennsylvania submitted revised regulatory provisions for approval and an “effective as” demonstration to address the required amendments. The

State also submitted some proposed regulatory changes that are not intended to address any of the required amendments.

Regulatory Changes: The provisions of the Pennsylvania rules that Pennsylvania proposes to revise and/or add are found at 25 Pennsylvania Code. The following is a summary of the regulatory changes being proposed to address program deficiencies noted at 30 CFR 938.16.

Section 86.1, Definitions

The Noncoal Surface Mining and Reclamation Act (NSMRA) is being added to the list for the definition of Acts. When Chapter 86 was promulgated in 1983, noncoal mining was regulated under the authority of the Pennsylvania Surface Mining Conservation and Reclamation Act (PASMCR). In 1984, the NSMRA was enacted, superseding the role of PASMCR for noncoal mining. In order to comply with Federal program requirements (and to have an effective regulatory program) relating to incidental extraction of coal under noncoal mining permits, Pennsylvania states that it is necessary to include NSMRA in the applicable Acts. This amendment is intended to address the requirement set forth at 30 CFR 938.16(tt).

Pennsylvania also states that PASMCR Section 1396.3a(d) includes a reference to Federal SMCRA. This meets the requirement and makes the Pennsylvania program no less effective than the Federal requirements. The text of Section 1396.3a(d) is available online at Regulations.gov.

Pennsylvania states that the standard in Section 86.37 (a)(10) is the “lack of ability or intention to comply with the acts * * *” This inability or unwillingness to comply would be shown through violations of Federal SMCRA or in other states. If the language was that “the applicant did not comply with the acts,” then that would be more limiting than the existing language. The existing language allows Pennsylvania to include any violations in determining the “lack of ability or intention to comply with the acts * * *” In addition, the regulation submitted as program amendment PA-156-FOR in March 2010 includes a revision adding the State NSMRA to the definition of “acts” in Section 86.1.

The definition of “owned or controlled” and “owns or controls” is being corrected to include the current reference to the Federal regulations relating to definitions. This addresses Federal regulation revisions that resulted in the definition being placed

in a different section of the State program.

Section 86.5, Extraction of Coal Incidental to Noncoal Surface Mining

Section 86.5(m) is amended to add the requirement for the Department to notify interested parties in the case that the Department decides not to revoke an exemption from the coal permitting requirements. This amendment is intended to address the requirement set forth at 30 CFR 938.16(ppp).

Section 86.36, Review of Permit Applications

Section 86.36 is amended to delete the three-year time limitation for the review of an outstanding Federal violation. This amendment is intended to address the requirement set forth at 30 CFR 938.16(rr).

Section 86.37, Criteria for Permit Approval or Denial

Section 86.37(a)(8) is amended to include a reference to the Federal definition of a violation. This amendment was required by the Federal requirement set forth at 30 CFR 938.16(ww). This amendment is also intended to address the deficiencies set forth at 30 CFR 938.16(uu), (vv), and (xx).

Section 86.62, Identification of Interests

Section 86.62(b)(2)(ii) is being amended to correct the reference to the Federal minimum enforcement action. This amendment is intended to address the requirement set forth at 30 CFR 938.16(zz).

Section 86.62(c) is being amended to include the permittee name and address as required information relating to permits for related entities and to clarify that issued permits must be reported as part of an application. This amendment is intended to address the requirement set forth at 30 CFR 938.16(aaa).

Section 86.103(g), Procedure; Section 86.129, Coal Exploration on Areas Designated as Unsuitable for Surface Mining Operations; and Section 86.133, General Requirements

Section 86.103(g) is being added to require that the procedures for processing an assertion of Valid Existing Rights (VER) follow the Federal requirements by incorporating the Federal procedural requirements by reference.

Section 86.129(b) is being amended to provide specific procedures and requirements for permit applications for exploration activities on lands designated as unsuitable for mining. The detailed requirements mirror the

Federal procedures and standards for approval. This amendment also results in the renumbering of current subsections 86.129(b)(1) and 86.129(b)(2).

Section 86.133(f) is being amended to clarify that a permit is required for exploration activities on lands designated as unsuitable for mining.

The amendments to 86.129(b) and 86.133(f) are intended to address the requirements set forth at 30 CFR 938.16(ccc).

Section 86.159, Self-Bonding

Section 86.159(l)(1) is amended to incorporate the language in the Federal regulations regarding the indemnification of self-bonds in the case of a corporate applicant that has a parent company. This amendment is intended to address the requirement set forth at 30 CFR 938.16(nnn).

Section 87.112, Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance and Section 89.111, Large impoundments

Section 87.112(c) is amended to add a requirement to protect miners or the public. Section 87.112(c)(1) is amended to add the required seismic safety factor.

Section 89.111(c) is amended to add a requirement to protect miners or the public. Section 89.111(c)(1) is amended to add the required seismic safety factor.

These amendments are intended to address the requirement set forth at 30 CFR 938.16(iii).

Section 88.321, Disposal of Noncoal Wastes and Section 90.133, Disposal of Noncoal Wastes

Section 88.321 is amended to include all noncoal wastes and to apply the prohibition to impoundments.

Section 90.133 is amended to include all noncoal wastes and to apply the prohibition to impoundments.

These amendments are intended to address the requirements set forth at 30 CFR 938.16(ttt).

Section 90.112, Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance

Section 90.112(c) is amended to add a requirement to protect miners or the public. Section 90.112(c)(2) is amended to match the language in the Federal regulations regarding spillway capacity for large impoundments at coal refuse disposal sites. These amendments are intended to address the requirements set forth at 30 CFR 938.16(jjj).

Required Amendment 30 CFR 938.16(yy): “Effective As” Demonstration

There are no proposed regulation changes being made to sections 86.43, Improvidently Issued Permits and 86.44, Rescission of Improvidently Issued Permits. Instead, Pennsylvania submits that its existing regulations are sufficient to render its program no less effective than the Federal regulations. The submission provides Pennsylvania’s reasoning for this assertion as follows:

The difference between the Federal requirement and Pennsylvania’s regulations is related to the phrase ‘reason to believe’ in the CFR and ‘found’ in Pennsylvania’s regulations. The Federal regulation does not describe how one would have a ‘reason to believe.’

An example may help illustrate how this regulation is applied in Pennsylvania. In a case where a permit has been issued based on the presumption that a violation is in the process of being corrected, Pennsylvania uses eFACTS to track the status of the violation. In this example, the permit is conditionally issued, based upon continued compliance. The eFACTS database has functionality where the permit record is linked to the enforcement record for the violation that is in satisfactory progress. If the status of the enforcement record is changed indicating noncompliance, then the permit is automatically flagged for rescission. Another example is a case where a prohibited party may be participating in the mining activities. If Pennsylvania finds (usually through a site inspection) that a forfeited operator is in a position of ownership or control at a mining operation, an investigation is initiated. Pennsylvania has relied on the investigative expertise of the OSM Applicant/ violator System (AVS) investigative staff in many of these cases. If the investigation demonstrates a link, then the permit rescission will ensue.

While having a ‘reason to believe’ would most likely occur sooner in the process than having a ‘finding’ and there is an implication of something more formal with a finding, both regulations require the regulatory authority to take an affirmative action to pursue rescission if it is necessary.

Pennsylvania requests that this required amendment be removed based on this assertion.

Remining Financial Guarantees—OSM Partial Disapproval of 1998 Regulatory Amendment found at 30 CFR 938.12(c)(3)

We did not approve a provision of a proposed program amendment that Pennsylvania submitted on December 18, 1998, regarding 25 Pa Code 86.281(e). The last sentence, which stated, “If the actual cost of reclamation by the Department exceeds the amount reserved, additional funds from the Remining Financial Assurance Fund will be used to complete reclamation” was not approved.

Pennsylvania’s Response to the OSM Disapproval at 30 CFR 938.12(c)(3)

In its submission of March 17, 2010, Pennsylvania indicates that the following regulatory changes are being made to the remining financial guarantee program to address the portion of 25 Pa Code 86.281(e) that was not approved as documented at 30 CFR 938.12(c)(3).

Section 86.165, Failure To Maintain Proper Bond

Section 86.165(a) is amended to add that an operator’s obligation to maintain a proper bond includes the payments required under the Remining Financial Guarantee program. This amendment will allow the enforcement of the payment requirement using consistent procedures.

Section 86.281, Financial Guarantees To Insure Reclamation—General

Section 86.281(c) is amended to provide that the Department will designate a specified amount in the financial guarantees special account as financial assurance for the reclamation obligation of a permit with an approved remining area, rather than reserving a portion of those funds. This change is necessary in light of the conversion to a conventional bonding program. Under conventional bonding, the total reclamation cost is accounted for when determining the bond amount, thus enabling the Department to calculate more precisely the amount of funds that may need to be used to reclaim an approved remining area covered by a remining financial guarantee.

Section 86.281(e) is amended in conjunction with the revision in Section 86.281(c) and to clarify that all of the bonds forfeited (including the Remining Financial Guarantee) on a permit are to be used for reclamation of the mine site (including the remining area). It also is amended to allow, rather than require, the use of additional funds from the Remining Financial Assurance Fund if they are needed to complete the reclamation of the mine site. This change is based primarily on the concept that under conventional bonding, the bond amount posted is the amount required to complete the reclamation. In addition, it provides the Department with flexibility to use money from the Remining Financial Assurance Fund to pay for the necessary reclamation.

Section 86.282, Participation Requirements

Section 86.282(a)(2) is being revised to delete the option of using the ability to obtain a letter of credit as a

demonstration of financial responsibility. Experience in implementing the Remining Financial Guarantee program has shown that the ability to obtain a letter of credit from a bank is not a good test of financial responsibility.

Section 86.283, Procedures

Section 86.283(a)(1) is amended to change the way the amount of the payment is determined as a result of the change to conventional bonding. The deleted language is based on the per-acre bond rate system. The proposed wording is based on the amount of the Remining Financial Guarantee.

Section 86.283(d) is amended to clarify how financial guarantee funds are allocated.

Section 86.283(e) is amended to delete language relating to the process of "bond rollover" that was allowed under the Alternative Bonding System (ABS). The concept of "bond rollover" is not pertinent to conventional bonding.

Section 86.283(f) is being added to reduce the potential risk of insolvency of the Remining Financial Assurance Fund by requiring the replacement of a Remining Financial Guarantee in the event a pollutional discharge occurs at a mine site bonded with a Remining Financial Guarantee.

Section 86.284, Forfeiture

Sections 86.284(a) and (c) are amended to be consistent with the changes made in Sections 86.281(c) and (e).

Guidance Documents: Pennsylvania is seeking to amend its program to include three program directives that will replace a policy statement initially amended into the Pennsylvania program on March 20, 1984, and subsequently revised by program amendments approved on May 15, 1984, July 3, 1984, September 8, 1986, and October 27, 1988. The original policy statement described Pennsylvania's policies regarding Departmental inspections conducted at permitted coal mine operations; citing and enforcing violations found at the permitted operations; and alternative enforcement actions available to the Department in the event violations are not abated in a timely manner. These topics have now been separated and addressed in three Directives identified as 562-4100-301 Compliance/Enforcement Procedures, 562-4100-307 Alternative Enforcement, and 562-3000-102 Coal and Industrial Mineral Mining Inspections. With respect to 562-3000-102, regarding the type and frequency of inspections at coal mine permit sites, only Sections I and II.A, II.B, and II.F are being

submitted for inclusion in Pennsylvania's approved coal mining regulatory program. There are no major changes in Departmental policy regarding these three new Directives. The policies are being reorganized, updated, and placed into the Departmental Directives format.

Supporting Documentation: In addition to the documents mentioned above, the State has submitted the following documents for reference purposes only: Guidance Documents 562-3000-802 Coal Mining Applicant Violator System (AVS) Compliance Manual, 562-2000-703 Changes to Licenses, Bonds and Permits, 563-2000-001 Government Financed Construction Contracts, and 562-3000-110 Applicant Violator System (AVS) Inspections; 5600-PM-MR0025, Application Form—Mining License, Contract Operator Approval and Ownership and Control Registration; Sample Permit suspension letter; and, "As Effective As" demonstration for the Inspection Program.

III. Public Comment Procedures

Under the provisions of 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 Pennsylvania program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

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 April 19, 2011. If you are disabled and need reasonable 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 there is only limited interest in participating in a public hearing, 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 12866—Regulatory Planning and Review

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

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an

opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 18, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2011-7907 Filed 4-1-11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS-6036-P2]

RIN 0938-AQ57

Medicare Program; Revisions to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Suppliers Safeguards

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the definition of and modify requirements regarding “direct solicitation,” allow DMEPOS suppliers, including DMEPOS competitive bidding program contract suppliers, to contract with licensed agents to provide DMEPOS supplies unless prohibited by State law; remove the requirement for compliance with local zoning laws; and modify certain State licensing requirement exceptions.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 3, 2011.

ADDRESSES: In commenting, please refer to file code CMS-6036-P2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation

to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-6036-P2, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-6036-P2, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Katie Mucklow Lehman, (410) 786-0537.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any

personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

A. General Overview

Medicare services are furnished by two types of entities, providers, and suppliers. At § 400.202, the term “provider” is defined as a hospital, a critical access hospital (CAH), a skilled nursing facility (SNF), a comprehensive outpatient rehabilitation facility (CORF), a home health agency (HHA), or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services. The term “provider” is also defined in sections 1861(u) and 1866(e) of the Social Security Act (the Act).

For purposes of the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) supplier standards, the term “supplier” is defined in § 424.57(a) as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered DMEPOS items to Medicare beneficiaries that meet the DMEPOS supplier standards. A supplier that furnishes DMEPOS is one category of supplier. Other supplier categories may include, for example, physicians, nurse practitioners, and physical therapists. If a supplier, such as a physician or physical therapist, also furnishes DMEPOS to a patient, then the supplier is also considered to be a DMEPOS supplier. The term “DMEPOS” encompasses the types of items included in the definition of medical