

data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1999.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-127-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.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania Regulatory Program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pennsylvania has submitted this proposed amendment to reflect changes made to regulations in the Pennsylvania program dealing with the Small Operator Assistance Program (SOAP). This proposal modifies some requirements and adds other requirements dealing with SOAP.

DATES: Written comments must be received by 4 p.m., on December 29, 1999. If requested, a public hearing on the proposed amendment will be held on December 27, 1999. Requests to speak at the hearing must be received by 4 p.m., on December 14, 1999.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may

request that we withhold their home address from the rulemaking (or administrative) record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking (or administrative) record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection in their entirety.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

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

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments, can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Subsequent actions concerning the Pennsylvania program amendments are identified at 30 CFR 938.15.

II. Discussion of the Proposed Amendment

By letter dated November 8, 1999 (Administrative Record No. PA-846.02), the Pennsylvania Department of

Environmental Protection (PADEP) submitted a proposed amendment to its program regarding changes to SOAP made because of the Department's Regulatory Basics Initiative (RBI). Under the RBI, regulations are revised because they were considered unclear, unnecessary or were more stringent than the corresponding federal regulations.

The changes proposed by PADEP in this amendment apply to the following parts of the Pennsylvania program: 25 PA Code 86.80-86.87, 86.91, 86.92, 86.94, and 86.95. These changes are summarized below.

1. A new section, 25 PA Code 86.80 titled "Definitions," is proposed to be added to the Pennsylvania program. A definition of the term "qualified consultant and qualified laboratory" is proposed to be added to this section. The term is defined as a designated public agency, private consulting firm, institution or analytical laboratory which can provide the required services under this program in accordance with § 86.92 (relating to basic qualifications).

2. Several changes are proposed for 25 PA Code 86.81. The first sentence in this section is proposed to be identified as subsection (a) and the phrase "for qualified small operators who request assistance" is proposed to be removed. A new subsection (a)(1) which states "Review requests for assistance," is proposed and the former subsection (1) is proposed to be designated as (a)(2). A change to former subsection (1)(iii) [now designated as (a)(2)(iii)] proposes that under SOAP the Department will pay a qualified consultant to provide a description of existing resources within and adjacent to the proposed area in accordance with one of the following:

- (A) Section 87.41-87.47, 87.50 and 87.54.
- (B) Sections 88.21-88.27 and 88.31.
- (C) Sections 89.33-89.36, 89.38 and 89.74.

These referenced sections were changed from the original language which required a description of the existing resources in accordance with either §§ 87.41-87.50, 87.52-87.54, 88.21-88.33 or §§ 89.33-89.38, 89.71-89.74, 89.102, 89.121, 89.122, 89.141, 89.142(a).

PADEP is proposing to change references to other regulations in former subsection (1)(iv) [now designated as (a)(2)(iv)]. This subsection requires detailed descriptions of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with references with other regulations. The proposal now reads: "Provide a detailed description, to

include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with one of the following:

(A) Sections 87.69, 87.77 and 87.84 (relating to protection of hydrologic balance; protection of public parks and historic places; and, fish and wildlife protection and enhancement plan).

(B) Sections 88.49, 88.56 and 88.62 (relating to protection of hydrologic balance; protection of public parks and historic places; and fish and wildlife protection and enhancement plan).

(C) Sections 89.33–89.36, 89.38 and 89.74.

Former subsection (2) is proposed to be relabeled as (a)(3) and a new subsection (b) is proposed to be added. Subsection (b) states “If funds allocated by the Department for the payment of services provided to the applicant are less than those required to pay for the services, the applicant is responsible for costs exceeding the amount of funds allocated for the services provided to the applicant.”

3. The changes proposed for 25 PA Code 86.82 include deleting subsection (a)(1) which states the Department will review requests for assistance and determine qualified operators. This change will cause subsequent subsections to be renumbered, e.g., former subsection (a)(2) is now (a)(1), former subsection (a)(3) is now (a)(2), former subsection (a)(4) is now (a)(3) and former subsection (a)(5) is now (a)(4).

4. One subsection of 25 PA Code 86.83 was proposed to be changed. In subsection (a)(2) the phrase “the applicant’s operations during the 12-month period immediately following the date” has been deleted. This subsection as proposed now reads “Establishes that the probable total attributed annual production from all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons.”

Additionally, PADEP is proposing to add subsection (c) to 25 PA Code 86.83. This subsection states “For the purpose of this subchapter, measurement of coal production will be based on the production reported to the office of surface mining reclamation and enforcement for the purpose of the reclamation fee payment.”

5. There are several changes proposed for 25 PA Code 86.84. Subsection (a) is proposed to be deleted and former subsection (b) is relabeled as subsection (a). The first phrase in the new subsection (a) is proposed to read “An application for assistance shall contain

the following information.” Other changes include the proposed deletion of former subsection (a)(2)(iii) which required a SOAP application to contain the surface mining operator’s license number, if applicable. A requirement to provide the mine operator’s license number now appears as newly proposed subsection 86.84(a)(7). Finally, subsection (c) has been relabeled as subsection (b) and is proposed to be changed to read “The application shall be attested by a notary public or district justice.”

6. PADEP is proposing to add subsection (a)(3) to 25 PA Code 86.85. Subsection (a)(3) reads “Provide the applicant a copy of the contract or other appropriate work order for the qualified consultants’ services and the consultants’ report within 15 days of the Department’s final approval.” Subsection (b) of 25 PA Code 86.85 is proposed to be changed to read “The granting of assistance under this program does not imply that the Department will approve a subsequent permit application.” In addition, PADEP is proposing to add subsection (c) to 25 PA Code 86.85. This proposed subsection reads “Within 45 days of receipt of a complete application for assistance, the Department will inform the applicant in writing if the application is denied and will state the reason for denial.”

7. PADEP is proposing to delete 25 PA Code 86.86. This section required the Department to provide the applicant a copy of the contract or other appropriate work order for the consultants’ services and the final approval report. This section also required the Department to inform the applicant in writing if the application is denied and to state the reason for denial. PADEP is proposing to retitle this section as “Reserved.”

8. PADEP is proposing to change the sentence structure of subsection (a) of 25 PA Code 86.87. The proposed language now reads “The Department will determine the data collection requirements to meet the objectives of the program for each applicant or group of applicants. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.”

9. PADEP is proposing to delete 25 PA Code 86.91. This section was titled, “Definitions and Responsibilities” and contained in subsection (a) definitions

for the terms “qualified consultant” and “qualified laboratory.” These terms are now defined under the proposed section 25 PA Code 86.80. Subsection (b) required persons who wanted to be included in a list of qualified consultants or laboratories to apply to the Department. This subsection, with some modifications, has been moved to 25 PA Code 86.92(c). Subsection (c) required the Department to designate and maintain a list of qualified consultants and laboratories who demonstrate that they meet the qualifications of § 86.92. PADEP is proposing to retitle this section as “Reserved.”

10. In 25 PA Code 86.92, PADEP is proposing to add subsection (c). This subsection reads “Persons who desire to be included in the list of qualified consultants or qualified laboratories established by the Department under § 86.82 (relating to responsibilities) shall apply to the Department and provide the information necessary to establish the qualifications required by this section.”

11. PADEP is proposing two changes to 25 PA Code 86.94. The first change in subsection (a)(3) replaces the word “mine” with the term “commence mining.” The proposed revision reads “Fails to commence mining within 3 years after obtaining a permit.” The second proposed revision is the deletion of subsection (c) and the subsequent relabeling of subsection (d) as subsection (c). The deleted language of former subsection (c) stated “If funds allocated for the services are less than those required to pay for the services, the applicant is responsible for costs exceeding the amount of funds allocated for the services to the applicant.”

12. The final change proposed by PADEP is the deletion of 25 PA Code 86.95. This section was titled, “Measurement” and reads “For the purpose of this program, measurement of coal production will be based on the production reported to the Office of Surface Mining Reclamation and Enforcement for the purpose of the reclamation fee payment.” PADEP is proposing to retitle this section as “Reserved.”

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administration Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on December 14, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If a public hearing is held, it will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed 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 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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. 4332(2)(C)).

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 has determined 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 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a

“significant regulatory action” under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1999.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF57

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on the Proposed Rule To List the Scaleshell Mussel as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service, pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice that we are holding a public hearing and reopening the comment period on the proposed rule to list the scaleshell mussel (*Leptodea leptodon*) as an endangered species. We invite all interested parties to submit comments on this proposal. The reopening of the comment period will further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES**).

DATES: The public hearing will be held from 7 PM to 10 PM on Wednesday, December 8, 1999, in Jefferson City, Missouri. The comment period is reopened on November 29, 1999, and will close on January 7, 2000. In the final decision on this proposal, we will consider any comments received by the closing date.

ADDRESSES: The public hearing will be held at the Runge Conservation Nature Center Auditorium located in Jefferson City, Missouri, approximately 0.5 miles north of Highway 50 on Highway 179. You may submit written comments and materials concerning the proposal at the hearing or send them directly to the Field Supervisor, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201-7712.