

November 10, 1999) proposing regulations that will establish a formal process for the classification of games played on Indian lands under the Indian Gaming Regulatory Act (Act). The date for filing comments is being extended and one hearing will be held.

DATES: Comments shall be filed on or before February 24, 2000. A hearing shall be held on January 24, 2000, from 9:30 a.m. to 4 p.m. at the DoubleTree Warren Hotel, 6110 South Yale, Tulsa, Oklahoma.

ADDRESSES: Comments and requests to participate in the hearing may be mailed to: Game Classification Comments, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632-7066 (this is not a toll-free number). Comments received may be inspected between 9:00 a.m. and noon, and between 2:00 p.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman at 202/632-7003; fax 202/632-7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating class II gaming and certain aspects of class III gaming on Indian lands. The proposed regulations establish a formal, administrative process for deciding whether a game is a Class II or III game and allow the Commission to discontinue the current advisory classification opinion process. Several commenters have requested more time to prepare their comments on the proposed regulations. Several have also requested the opportunity to present their views directly to the Commissioners in a hearing. The Commission has determined that these regulations are of such significance that the commenters should be given additional time to determine and present their views in writing and at a hearing. Persons wishing to present their views at the hearings should contact the Commission.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-128-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), 30 U.S.C. 1201 *et seq.*, as amended. Pennsylvania has submitted this proposed amendment to reflect changes made to regulations in the Pennsylvania program through the Department's Regulatory Basics Initiative (RBI). Under this initiative, regulations were revised because they were considered to be unclear, unnecessary or more stringent than the corresponding Federal regulation. The RBI resulted in the following rulemaking:

Coal Mining—Areas Unsuitable for Mining, *Pennsylvania Bulletin*, Vol. 29, No. 41, October 9, 1999.

DATES: Written comments must be received by 4:00 p.m., on January 26, 2000. If requested, a public hearing on the proposed amendment will be held on January 21, 2000. Requests to speak at the hearing must be received by 4:00 p.m., on January 11, 2000.

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 meeting 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 22, 1999 (Administrative Record No. PA-861.03, the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program regarding rules related to Areas Unsuitable for Mining because of the department's Regulatory Basics Initiative (RBI). Under the RBI, regulations were 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 86.1, 86.101–86.121, and 86.123–86.130. These changes are summarized below. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

1. In 25 PA Code 86.1 (definitions), subsections (i) through (v) which formally defined Valid Existing Rights have been deleted and replaced by the following: “Rights which exist under the definition of ‘valid existing rights’ in 30 CFR Section 761.5 (relating to areas unsuitable for mining).” The purpose of this change is to make this section more consistent with the Federal regulations at 30 CFR 761.5.

2. In 25 PA Code 86.101 (definitions), the amendment revises the definitions of the following terms: fragile lands; historic lands; public building; public park; renewable resource lands; and significant recreational, timber, economic or other values incompatible with surface mining operations. The objectives of the revisions are consistency with the Federal regulations (at 30 CFR 700.5, 761.5, and 762.5) and, in the case of fragile lands, consistency with Pennsylvania SMCRA, Section 4.5. Specific revisions include the following:

In the definition of fragile lands, “significantly” is inserted in front of the word, “damaged.” At the end of the subsection, the amendment deletes the following: “* * * and buffer zones adjacent to the boundaries of areas where surface mining operations are prohibited under section 4.5(h) of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4e(h)).”

In the definition of historic lands, the following is deleted: “Historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed * * *”. This is replaced by: “Areas containing historic, cultural or scientific resources. Examples of historic lands include archaeological sites, properties listed on * * *”.

In the definition of public building, the following is deleted: “* * * by a public agency or used principally * * *”. This is replaced by “* * * or leased and principally used by a government agency * * *”.

In the definition of public park, “* * * or portion of an area * * *” is inserted after the word, “area” at the beginning of the subsection. In the same sentence, the word “primarily,” is inserted before “* * * for public recreational use * * *”. The following final sentence has been deleted: “For the purposes of this subchapter, local agency shall include nonprofit organizations owning lands which are

dedicated or designated for public recreational use.”

The definition of renewable resource lands has been changed to: “Areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.”

In the definition of surface mining operations, the following phrase at the end of the subsection has been deleted: “* * * and activities involved in or related to underground coal mining which are conducted on the surface of the land, produce changes in the land surface, or disturbs the surface, air or water resources of the area.”

3. 25 PA Code 86.102 (areas where mining is prohibited or limited) was revised to improve consistency with the Federal regulations (at 30 CFR 761.11 and 761.12), to recognize the role of the newly formed Department of Conservation and Natural Resources, to clarify a legal citation, and insert metric equivalents for barrier distances.

In subsection (1), following the citation, “(16 U.S.C.A. 1276(a)),” the following has been inserted: “* * * or study rivers or study river corridors as established in guidelines under the act * * *”. In subsection (3), the following phrase after the word, “included,” has been deleted: “* * * on or eligible for inclusion * * *”. The first part of the subsection now reads: “Which will adversely affect a publicly-owned park or a place included on the National Register of Historic Places * * *”. In subsection (4), “* * * the Department of Conservation and Natural Resources and * * *” is inserted before the words, “the Department.” In subsection (5), “* * * Department of Conservation and Natural Resources and the * * *” is inserted before the word, “Department.”

Subsection (9) has been revised to read as follows:

(9) Within 300 feet (91.44 meters) measured horizontally from an occupied dwelling, unless one or more of the following exist:

(i) The only part of the surface mining operations which is within 300 feet (91.44 meters) of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite to the dwelling.

(ii) The owner thereof has provided a written waiver by lease, deed or other conveyance clarifying that the owner and signatory had the legal right to deny surface mining operations and knowingly waived that right and consented to surface mining operations closer than 300 feet (91.44 meters) of the dwelling as specified.

(A) A valid waiver shall remain in effect against subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase.

(B) Subsequent owners shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records or if the surface mining operations have proceeded to within the 300 foot (91.44 meters) limit prior to the date of purchase.

(iii) A new waiver is not required if the applicant for a permit had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet (91.44 meters) of such dwelling.

4. Parts of 25 PA Code 86.103 (procedures) have been revised to increase the clarity of the language and to add metric equivalents. Subsection (d) has been revised to read as follows:

(d) When the proposed surface mining operations would be conducted within 300 feet (91.44 meters) measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver as specified in § 86.102(9) (relating to areas where mining is prohibited or limited).

In subsection (e) the word, “may,” following “surface mining operations” has been replaced by, “will.” The first part of the subsection now reads: “When the proposed surface mining operations will adversely affect a publicly owned park or a place included on the National Register of Historic Places, * * *”. Also, the following has been added to subsection (e)(2):

(i) Upon request by the appropriate agency a 30-day extension may be granted.

(ii) Failure to object within the comment period shall constitute an approval of the proposed permit by that agency.

5. 25 PA Code 86.121 (areas designated unsuitable for surface mining operations) has been revised for clarity and consistency with the Federal regulations (at 30 CFR 762.13). The section’s title has been changed to: “Areas exempt from designation as unsuitable for surface mining operations.” Also, subsections (a) and (b) have been deleted, and the following added:

(1) Surface mining operations were being conducted on August 3, 1977.

(2) Surface mining operations have been authorized by a valid permit issued under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1–1396.19a), the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51–30.66), The Clean Streams Law (35 P.S. §§ 691.1–691.1001), or the

Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1–1406.21).

(3) A person establishes that substantial legal and financial commitments in surface mining operations were in existence prior to January 4, 1977.

6. In 25 PA Code 86.123 (procedures: petitions), the following language has been added to subsection (c)(5) to make it more consistent with the Federal regulations at 30 CFR 764.13: “A person having an interest which is or may be adversely affected must demonstrate an ‘injury in fact’ by describing the injury to the specific affected interest and demonstrating how they are among the injured.”

7. 25 PA Code 86.124 (procedures: initial processing, record keeping and notification requirements) has been revised for clarity and consistency with 25 PA Code 86.126 and the corresponding Federal provisions at 30 CFR 764.15 and 764.17. Following the first sentence of subsection (2), the following has been inserted: “A frivolous petition is one in which the allegations of harm lack serious merit.” In subsection (c), the following is inserted after the words, “allegations of facts” for clarity: “* * * describing how the designation determination directly affects the intervenor * * *”. Subsection (f) has been revised to read as follows: “The Department will prepare a recommendation on each complete petition received under this section and submit it to the EQB within 12 months of receipt of the complete petition.”

8. 25 PA Code 86.125 (procedures: hearing requirements) has been revised for clarity and consistency with the PADEP and EQB regulatory review procedures. The part of subsection (a), beginning with the words, “The hearing shall be” has been separated into a new subsection (b). The last sentence under the original subsection (a), which had required the EQB to make a verbatim transcript of the hearing, has been deleted. The original subsection (b) has been changed to (e), and has been revised. The original subsections (c) and (d) have been changed to (g) and (h) respectively. The new subsections (c) through (d) read as follows:

(c) No person shall bear the burden of proof or persuasion.

(d) A verbatim transcript of the hearing will be made and included in the public record.

The opening statement of subsection (e) has been changed to read as follows: “The department will give notice of the date, time and location of the hearing by first class mail postmarked not less than

30 days before the scheduled hearing to:” Then subsections (e)(2) through (4) have been revised as follows: the original language in (e)(2) (“The petitioner and intervenors”) has been deleted; the original language in (3) has been transferred to (2), and has been changed to read, “persons known to the department to have an ownership or other interest in the area covered by the petition”; and (e)(4) has been deleted.

The language originally under subsection (f) is now designated as (k). The new subsection (f) reads as follows: “The Department will give notice of the date, time and location of the hearing by certified mail postmarked not less than 30 days before the scheduled hearing to the petitioner and to the intervenors.”

9. 25 PA Code 86.126 (procedures: decision) has been revised for clarity and consistency with PADEP and EQB regulatory review procedures. Under subsection (b) there are new subsections, (1) and (2), which specify actions the EQB is required to take, depending on its decision whether or not to designate an area as unsuitable for surface mining operations.

10. 25 PA Code 86.127 (data base and inventory system requirements) has been revised to correct a misspelling and reflect the dissolution of the Department of Community and Economic Development.

11. 25 PA Code 86.128 (public information) has been revised to correct a misspelling.

12. 25 PA Code 86.129 (coal exploration) has been revised for consistency with the Federal regulations at 30 CFR 762.14. Its title has been changed to: “Coal exploration on areas designated as unsuitable for surface mining operations.” The remainder of the revised subsection reads as follows:

(a) Designation of an area as unsuitable for all or certain types of surface mining operations under this chapter does not prohibit coal exploration operations in the area.

(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The exploration is consistent with the designation.

(2) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration), and the Department has issued written approval for the exploration.

13. 25 PA Code 86.130 (areas designated as unsuitable for mining) has been revised to insert metric equivalents and correct two regulatory references.

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 January 11, 2000. 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: December 16, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99-33462 Filed 12-23-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding and Commencement of Status Review for a Petition to List the Sacramento Mountains Checkerspot Butterfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U. S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) as an endangered species and designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). We find the petition provides substantial scientific and commercial information to indicate that listing of this animal may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this action.

DATES: The finding in this document was made on December 7, 1999. To be considered in the status review and subsequent 12-month finding for the petition, your information and comments must be received by February 25, 2000.

ADDRESSES: You may submit data, information, comments, or questions relevant to this finding to the Field Supervisor, U. S. Fish and Wildlife Service, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Eric Hein, Endangered Species Biologist (see **ADDRESSES** section) (telephone 505/346-2525, extension 135).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90-days of receipt of the petition, and promptly publish notice of the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. The processing of this 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.