

to” is corrected to read “but allow a participant or beneficiary”.

#### **§ 1.457–7 [Corrected]**

■ 10. On page 41244, column 2, § 1.457–7, paragraph (i), of Example 1, line 18, the language “participant K, a calendar year taxpayer, has” is corrected to read “K, a calendar year taxpayer, has”.

#### **§ 1.457–8 [Corrected]**

■ 11. On page 41245, column 3, § 1.457–8, paragraph (b)(2), line 2, the language “purposes of a paragraph (b)(1) of this” is corrected to read “purposes of paragraph (b)(1) of this”.

#### **§ 1.457–9 [Corrected]**

■ 12. On page 41246, column 1, § 1.457–9, paragraph (a), line 7, the language “1.457–8 or 1.447–10. However, the plan” is corrected to read “§ 1.457–8 or § 1.447–10. However, the plan”.

#### **§ 1.457–10 [Corrected]**

■ 13. On page 41246, column 1, § 1.457–10, paragraph (a)(2), line 8, the language “under a paragraph (a)(2)(ii) of this” is corrected to read “under paragraph (a)(2)(ii) of this”.

■ 14. On page 41246, column 3, § 1.457–10, paragraph (b), line 6, the language “the conditions in paragraph (b)(2), (3),” is corrected to read “the conditions in paragraphs (b)(2), (3),”.

**LaNita Van Dyke,**

*Acting Chief, Publication and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 03–21826 Filed 8–26–03; 8:45 am]

BILLING CODE 4830–01–P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 938**

[PA–142–FOR]

#### **Pennsylvania Regulatory Program**

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

**ACTION:** Final rule.

**SUMMARY:** We are removing a required 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 required a review and approval of the configuration and species composition for reclaimed forest land on either a site-by-site basis or a program wide basis by

the Pennsylvania Bureau of Forestry. By removing the amendment, we find that the identified Pennsylvania regulations are no less effective than the corresponding Federal Regulations.

**EFFECTIVE DATE:** August 27, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036, e-mail: grieger@osmre.gov.

#### **SUPPLEMENTARY INFORMATION:**

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- I. Background on the Pennsylvania Program
- II. Submission of the Proposed Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. 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 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 the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania’s program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

#### **II. Submission of the Proposed Amendment**

By letter dated January 30, 2002 (Administrative Record No. PA 803.23), the Pennsylvania Department of Environmental Protection (PADEP) submitted a comparison of the State regulations at 25 Pennsylvania (Pa.) Code sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) and the corresponding Federal regulations along with its explanation of why Pennsylvania’s regulations are no less effective than their Federal counterparts regarding approval of the configuration and species composition for reclaimed forest land. This letter was submitted in

response to the required amendment to the Pennsylvania program codified at 30 CFR 938.16(fff). Following this correspondence, OSM’s Harrisburg Field Office, by letter dated February 22, 2002 (Administrative Record No. PA 803.24), submitted a request to the Pennsylvania Department of Conservation and Natural Resource’s Bureau of Forestry that it review the regulations at issue. By letter dated March 20, 2002 (Administrative Record No. PA 803.25), the Bureau of Forestry approved the subject regulations. The Bureau of Forestry also noted that it supported the use of native species when practical and discourages the use of invasive species.

We announced our proposal to remove the required amendment in the June 3, 2003, **Federal Register** (68 FR 33037). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on removing the required amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We received comments from two Federal agencies (the United States Environmental Protection Agency, Region III, and the United States Department of Labor, Mine Safety and Health Administration’s New Stanton and Wilkes-Barre Offices). We also received comments from two State agencies (the Pennsylvania Game Commission and the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation).

#### **III. OSM’s Findings**

Following are the findings we made concerning removing the required amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are removing the required amendment because in the March 20th letter, the Bureau of Forestry stated that it “approve[d] of the Pennsylvania DEP Protection Regulations, particularly the relevant portions of Sections 87.151(d), 89.86(e)(2)(ii)(C), 90.155(d), 90.155(c), 87.155(b)(2), 89.86(e)(2)(ii), and 90.159(b)(2).” The former three regulations approved in the Bureau’s letter contain species composition and configuration rules that apply to reclaimed forest land. Because the Bureau has approved the configuration and species composition for reclaimed forest land, as required under 30 CFR 938.16(fff), we have found that Pennsylvania has met the conditions of the required amendment and we are removing it.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. PA 803.28), but we did not receive any.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 803.28). On July 1, 2003 (Administrative Record No. PA 803.31), the United States Department of Labor, Mine Safety and Health Administration's (MSHA) New Stanton Office wrote to us indicating that the proposed rule did not conflict with any of its rules or regulations. On July 3, 2003 (Administrative Record No. PA 803.30), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

##### *State Agency Comments*

The Pennsylvania Game Commission (PGC) commented on June 24, 2003 (Administrative Record No. PA 803.29), that it generally approves a species composition that contains a minimum of 75% woody species. However, some endangered and threatened species may require more than 25% of their habitat to be open grassy areas devoid of trees and shrubs. PGC noted that in those cases, it must have the ability to alter the tree to grass ratios. PGC further noted that it supports the recommendations of the Bureau of Forestry and believes that removal of the proposed amendment satisfies the applicable criteria of 30 CFR 732.15.

We believe that the Pennsylvania program currently provides regulations that satisfy PGC's concerns regarding species composition. Pennsylvania's regulations at 25 Pa. Code 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) provide that the vegetation configuration and species composition for a postmining land use of fish and wildlife habitat must be established in accordance with guidelines from the Fish and Boat Commission and the PGC. Thus, the program provides for input by the PGC on species composition. In addition, the regulations at 25 Pa. Code 87.138, 89.82, and 90.150 provide protections for threatened and endangered species that require consultation with the PGC. This section also provides additional guidelines for selecting and planting vegetation on areas where the approved postmining land use is fish and wildlife habitat.

The Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation (PHMC) submitted comments on July 3, 2003 (Administrative Record No. PA 803.32). PHMC indicated that removing the referenced amendment will not affect the consideration of cultural resources in the mine reclamation process. PHMC further stated it supported the Pennsylvania Bureau of Forestry recommendation to avoid the use of invasive species which can be harmful to the environment and historic buildings and landscapes.

We agree with PHMC's assessment on removal of the required amendment. With regard to PHMC's comment on invasive species, which reflected the Bureau of Forestry's recommendation, Pennsylvania's regulations are no less effective than the Federal regulations at 30 CFR 816/817.111. The Federal regulations require that the revegetation be comprised of native species or, where necessary to achieve the postmining land use, an approved introduced species; be compatible with plant and animal species of the area, and "meet the requirements of applicable State and Federal seed, poisonous and noxious plant and introduced species laws or regulations." Similarly, Pennsylvania's regulations at 25 Pa. Code 87.147, 87.149, 89.86, 90.151 and 90.153 also require that the revegetation be of the same seasonal variety native to the area unless an introduced species is necessary to achieve the postmining land use; compatible with animal and plant species; can not be poisonous or noxious species; and must meet the applicable requirements of State and Federal seed and introduced species statutes. Additionally, Pennsylvania informed us in its January 30, 2002 (Administrative Record No. PA 803.23), letter supporting removal of the required amendment that the configuration and species composition for reclaiming forestland is reviewed and approved on a permit-by-permit basis by foresters in its District Mining Offices.

##### *Environmental Protection Agency (EPA) Comments*

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 803.28). EPA responded on July 17, 2003 (Administrative Record No. PA 803.33), that it has determined that removal of the required amendment at 30 CFR 938.16(fff) would not be inconsistent with the Clean Water Act or other statutes or regulations under its jurisdiction.

#### V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(fff).

#### VI. 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 regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget 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 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 because each 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, and 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. Pennsylvania does not regulate any Native Tribal lands.

*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. 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 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 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, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Pennsylvania 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 Pennsylvania 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: August 7, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 938.16 [Amended]**

■ 2. Section 938.16 is amended by removing and reserving paragraph (fff).

[FR Doc. 03–21876 Filed 8–26–03; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD09–03–261]

RIN 1625–AA00

**Safety Zone; Lake Michigan, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety for the Chicago to Saint Joseph sailboat race. The safety zone encompasses a portion of Lake Michigan. This safety zone is necessary to ensure vessel safety in the vicinity of the race start area, protecting both competitors and spectators from hazards associated with this sail boat race. This safety zone is intended to restrict vessel traffic from a portion of southern Lake Michigan.

**DATES:** This temporary final rule is effective from 7 a.m. until 10 a.m. on August 29, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CDG09–03–261 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Burr Ridge, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.