

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://dms.dot.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Raytheon Aircraft Company:** Docket No. FAA-2006-24640; Directorate Identifier 2006-CE-26-AD.

#### Comments Due Date

- (a) We must receive comments on this airworthiness directive (AD) action by July 21, 2006.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD affects Model 390 airplanes, serial numbers RB-1 and RB-4 through RB-139, that are certificated in any category.

#### Unsafe Condition

- (d) This proposed AD results from two reports of the spigot bearing not being positioned flush with the fitting assembly, but protruding outside of the fitting assembly. We are proposing this AD to detect spigot bearings that are not positioned flush with the fitting assembly. This condition could result in the spigot bearing becoming disengaged from the fitting assembly, which could cause motion between the wing and the fuselage and degrade the structural integrity of the wing attachment to the fuselage. This could lead to wing separation and loss of control of the airplane.

#### Compliance

- (e) To address this problem, you must do the following:

| Actions                                                                                                                                                                                       | Compliance                                                                                                                                                                                                                                                                                                                                                    | Procedures                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| (1) Inspect to determine whether the spigot bearing, part number (P/N) MS14104-16, is positioned flush inside the spigot fitting assembly and not protruding outside of the fitting assembly. | Within 50 hours time-in-service (TIS) after the effective date of this AD, and repetitively inspect thereafter every 50 hours TIS until the installation in paragraph (e)(2) of this AD is done.                                                                                                                                                              | Follow Raytheon Aircraft Company Mandatory Service Bulletin SB 53-3765, issued: November, 2005. |
| (2) Install the spigot bearing retainer kit, P/N 390-4304-0001. This installation terminates the inspection requirements in paragraph (e)(1) of this AD.                                      | At whichever of the following occurs first, unless already done:<br>(i) Before further flight after any inspection required by this AD where the spigot bearing, P/N MS14104-16, is found not to be flush with the spigot fitting assembly; or<br>(ii) Within 200 hours TIS or one calendar year after the effective date of this AD, whichever occurs first. | Follow Raytheon Aircraft Company Mandatory Service Bulletin SB 53-3765, issued: November, 2005. |

#### Alternative Methods of Compliance (AMOCs)

- (f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: David Ostrodka, Senior Aerospace Engineer, Wichita ACO, Airframe and Services Branch, ACE-118W, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4129; facsimile: (316) 946-4107 has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

#### Related Information

- (g) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67201. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket

number is Docket No. FAA-2006-24640; Directorate Identifier 2006-CE-26-AD.

Issued in Kansas City, Missouri, on May 17, 2006.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-7828 Filed 5-22-06; 8:45 am]

**BILLING CODE 4910-13-P**

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-146-FOR]

#### Pennsylvania Regulatory Program

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

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

**SUMMARY:** We are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the "Pennsylvania

program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania submitted separate letters proposing as effective as determinations to remove four OSM-issued required amendments. Pennsylvania asserts that its program, in the case of these required amendments, is as effective as the corresponding Federal regulations and SMCRA and can be removed. We are also providing discussions to remove three more required amendments.

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.

**DATES:** We will accept written comments until 4 p.m., local time June 22, 2006. If requested, we will hold a public hearing on June 19, 2006. We will accept requests to speak until 4 p.m., local time on June 7, 2006.

**ADDRESSES:** You may submit comments, identified by “PA-146-FOR” by any of the following methods:

- E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).
- Mail/Hand Delivery: George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101; Telephone: (717) 782-4036.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency docket number “PA-146-FOR” for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

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

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation,

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

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

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program
- II. Description of the Submission
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Pennsylvania Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

**II. Description of the Submission**

By letters dated February 7, 2006 (Administrative Record Number PA803.37) and February 28, 2006 (Administrative Record Number PA803.36), Pennsylvania sent OSM an explanation of why their program is no less effective than the Federal Program, which would allow us, if we find that Pennsylvania’s assertions are correct, to remove four required amendments at 30 CFR 938.16(eee), (ggg), (qqq) and (ttt) per the provisions of 30 CFR 730.5. We are also proposing to remove amendments at 30 CFR 938.16(r), (kkk) and (lll) (Administrative Record Number PA790.28, PA803.35 and PA830.38 respectively) based on an OSM’s Harrisburg Field Office staff review of whether the amendments are necessary. The full text of the as effective as determinations are available for you to read at the location listed

above under **ADDRESSES**. A summary of the proposed changes are as follows:

**30 CFR 938.16(r)**

OSM required Pennsylvania to amend Chapter 86.193(h) or otherwise amend its program to be no less effective than 30 CFR 846.12(a) by clarifying that an individual civil penalty is not a substitute for mandatory civil penalties, and also to clarify when the assessment of an individual civil penalty would be appropriate. (See 56 FR 24696, May 31, 1991).

The first part of this required amendment has been resolved as a result of an amendment that PADEP submitted to its program on January 23, 1996 (PA838.00—Part 1), to delete the provision at 25 Pa Code 86.193(h) which stated that “The Department may, when appropriate, assess a penalty against corporate officers, directors, or agents as an alternative to, or in combination with, other penalty actions.” As a result of OSM’s review, a final rule was issued on November 7, 1997 (62 FR 60169-60177), and the Director approved this deletion and determined that it did not render the Pennsylvania program less effective than the Federal regulation at 30 CFR 846.12(a). With this deletion, PADEP has satisfied the first part of this required amendment. The second part of 30 CFR 938.16(r) required Pennsylvania to clarify when the assessment of an individual civil penalty would be appropriate. PADEP asserted that an individual civil penalty is assessed in accordance with 25 Pa. Code 86.195(a), which provides for the assessment of individual civil penalties against corporate officers who either participate in or intentionally allow violations to occur. As such, we are proposing to remove the required program amendment at 30 CFR 938.16(r) on the basis that Pennsylvania’s program is no less effective than the Federal program.

**30 CFR 938.16(eee)**

OSM required Pennsylvania to submit a proposed amendment to 25 Pa. Code 86.195(a) and (b) to specify that individual civil penalties may be assessed against corporate directors or agents of the corporate permittee and to include provisions for the assessment of an individual civil penalty for a failure or refusal to comply with any orders issued by the Secretary. Pennsylvania is requesting that OSM remove the required program amendment at 30 CFR 938.16(eee) based on the determination that the Pennsylvania program is no less effective than its Federal counterpart with respect to (a) the scope of persons subject to individual civil penalties and

(b) the scope of orders subject to individual civil penalties against corporate permittees. Below is a discussion of Pennsylvania's submission to remove the required amendment. On April 8, 1993, OSM issued a final rule approving in part, and disapproving in part, an amendment to Pennsylvania's program regarding the State's authority to assess civil penalties against corporate directors, officers and agents. (See 66 FR 18149, April 8, 1993). Pennsylvania proposed to add 25 Pa. Code 86.195 which states in pertinent part as follows:

(a) The Department may assess a civil penalty against a corporate officer who participates in a violation or whose misconduct or intentional neglect causes or allows a violation.

(b) Whenever the Department issues an order to an operator for failing to abate violations contained in a previous order, it will send by certified mail to each corporate officer listed in the surface mining operator's license application under Section 86.353 (relating to identification of ownership), or to each corporate officer listed in a coal mining activities application under 862 (relating to identification of interests), a copy of the failure to abate order and a notice of the officer's liability under this Section. If the violations are not abated within 30 days of issuance of the failure to abate order, the department may assess a civil penalty against each officer receiving the notice provided by this Section. 25 Pa. Code 86.195(a) and (b).

There is a Federal counterpart to this regulation at 30 CFR 846.12 which provides:

(a) Except as provided in paragraph (b) of this Section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

In its analysis of 25 Pa. Code 86.195, OSM determined that the rule is consistent with or at least as effective as 30 CFR 846.12 with respect to culpability and conduct elements. Pennsylvania's regulations define "participates" as: "To take part in an action or to instruct another person or entity to conduct or not to conduct an activity." 25 Pa. Code 86.1. OSM concluded that because "participates" was defined consistently with the Federal terms "authorized, ordered or carried out" and is not modified by the knowing and willful standards applied to the Federal regulations, "it provides for a broader application of this rule." (See 66 FR at 18152-53).

However, OSM raised two issues with respect to whether Section 86.195 is as effective as the Federal regulations. First, noting that 30 CFR 846.12(a) states that a civil penalty may be assessed

against "any corporate director, officer or agent of a corporate permittee" while Section 86.195 uses the term "corporate officer" to describe potential recipients of individual penalties, OSM asserted that Pennsylvania's rule "appears to limit the assessment of civil penalties to a more restrictive set of individuals than the corresponding Federal regulations." (See 66 FR at 18152).

Second, OSM focused on the procedure in 25 Pa. Code 86.195(b) providing for a specific notice process accompanying the issuance of a PADEP failure to abate order. OSM then contrasted the emphasis in Section 86.195(b) on failure to abate orders with the Federal rule's use of the term "violation, failure or refusal." The Federal regulations define "violation, failure or refusal" in pertinent part as a "failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act \* \* \*." 30 CFR 701.5. According to OSM, 25 Pa. Code 86.195 "does not include a counterpart to the failure or refusal to comply with an order issued by the Secretary under the Act (such as an order to revise a permit)." (See 66 FR at 18153).

OSM concluded that those two aspects of 25 Pa. Code 86.195 are not as effective as the Federal regulations, disapproved the rule in part, and directed Pennsylvania to amend Section 86.195 to specify that individual civil penalties may be assessed against directors or agents of the corporate permittee and, to include provisions for assessing an individual civil penalty for a failure or refusal to comply with any orders issued by the Secretary. The required amendment was then codified at 30 CFR 938.16(eee).

#### A. Set of Individuals Subject to Individual Civil Penalties

Pennsylvania asserts that its regulatory program is as effective as the Federal regulations with respect to the scope of persons subject to individual civil penalties. 25 Pa. Code 86.195 implements Section 18.4 of the Pennsylvania Surface Mining Conservation and Reclamation Act (PASMCR). Pennsylvania asserts that one must look to the Pennsylvania Statute (P.S.) to determine the Pennsylvania Department of Environmental Protection's (PADEP) authority to assess individual civil penalties and to understand the intent of the implementing regulation. Pursuant to Section 18.4 of PASMCR: "In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule, regulation, order of the

Department, or a condition of any permit issued pursuant to this act, the Department may assess a civil penalty upon a person or municipality for such violation." 52 P.S. Section 1396.18d. The term "person" is defined by PASMCR as follows:

"Person" shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" shall not exclude the members of an association and the directors, officers or agents of a corporation. 52 P.S. Section 1396.3.

Thus, PASMCR expressly authorizes the department to issue civil penalties on the directors, officers or agents of a corporation. Corporate licensees are required to identify all directors, officers and agents as part of their application for a mining license in Pennsylvania. 25 Pa. Code 86.353. Mining-permit applications in Pennsylvania must contain similar ownership and control information. See 25 Pa. Code 86.62(b). Pennsylvania therefore submits that its overall regulatory program is as effective as the Federal regulations with respect to the agency's authority to assess individual civil penalties on corporate directors, officers or agents.

#### B. Scope of Orders Subject to Individual Civil Penalties

Pennsylvania also asserts that its regulatory program is as effective as the Federal regulations with respect to the scope of orders subject to individual civil penalties against corporate permittees. Section 86.195 states that the PADEP may assess a civil penalty against any corporate officer who "participates in a violation or whose misconduct or intentional neglect causes or allows a violation." The term "violation," though not expressly defined in the Pennsylvania regulations, is a broad term that encompasses any failure or refusal by a person to comply with the mining laws as set forth in the Pennsylvania statutes and regulations. See, e.g., Black's Law Dictionary 1564 (7th ed. 1999) (defining "violation" as an "infraction or breach of the law" or, as the "act of breaking or dishonoring the law"). Pennsylvania asserts that the PADEP has authority to issue orders consistent with section 521 of SMCRA. (See 25 Pa. Code 86.212).

The PADEP also has authority to issue any "other orders as are necessary to aid in the enforcement of the acts or the regulations promulgated pursuant thereto. The orders include, but are not limited to, orders modifying,

suspending or revoking permits and licenses.” 25 Pa. Code 86.213. See also 52 P.S. 1396.4b(a) (granting the PADEP the “authority and power to enforce the provisions of this act and the rules and regulations promulgated there under”). Moreover, PADEP orders are considered adjudications of the agency. See 2 Pa.C.S.A. Section 101 (defining “adjudication” as any “final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations” of a party); see also 35 P.S. 7514(c) (PADEP actions adversely affecting a person are appealable to the Environmental Hearing Board). Thus, the term “violation” in 86.195(a) must be interpreted to include a failure to comply with any type of final order issued by the PADEP to a corporate permittee.

PADEP continued to assert that OSM’s disapproval faulted Section 86.195(b) for not expressly including a counterpart to the Federal regulation’s failure to comply with an order issued by the Secretary (such as an order to revise a permit). 66 FR at 18153. But Section 86.195(a) authorizes the PADEP to assess individual civil penalties on corporate permittees for “a violation.” A failure or refusal by a corporate permittee to comply with any order of the PADEP necessary to aid in the enforcement of the Pennsylvania mining laws—including an order modifying a permit—would constitute a violation of Section 86.213, and would be subject to civil penalty assessment. See 52 P.S. 1396.18f (“it shall be unlawful to fail to comply with any rule or regulation of the PADEP or to fail to comply with any order or permit or license of the PADEP, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the PADEP”). See also 52 P.S. 1396.18d (authorizing assessment of civil penalties for violation of PASMCR, any PADEP rule or regulation, any order of the PADEP, or a condition of any permit).

Pennsylvania asserts that its regulatory program includes the authority to assess individual civil penalties for a broader scope of violations than those explicitly defined in the Federal regulations, including orders issued by the PADEP pertaining to permit conditions. Pennsylvania therefore submits that its regulatory program is as effective as the Federal regulations with respect to the types of orders subject to an individual civil penalty assessment pursuant to 25 Pa. Code 86.195. As such, Pennsylvania is requesting to have the required program

amendment at 30 CFR 938.16(eee) removed. (Administrative Record Number PA803.37)

### *30 CFR 938.16(ggg)*

OSM required Pennsylvania to submit a proposed amendment to 25 Pa. Code 86.151(d) to define the point at which seeding, fertilization, irrigation, or rill and gully repairs cease to be augmentative and may be considered nonaugmentative normal husbandry practices. Moreover, Pennsylvania shall submit a proposed amendment to require such practices be evaluated and approved in accordance with the State program amendment process and 30 CFR 732.17 (58 FR 18149–18161, April 8, 1993). Pennsylvania is requesting that OSM remove the required program amendment at 30 CFR 938.16(ggg) based on the determination that: Pennsylvania regulations define the point at which practices cease to be selective husbandry and become subject to liability extension in a way no less effective than similar guidance provided at 30 CFR 816/817.116(c)(4); and also that the PADEP has not approved any alternative selective husbandry practices and in the event additional “nonaugmentative normal husbandry practices” are identified beyond those already discussed at 25 Pa. Code 86.151(d), Pennsylvania will submit them to OSM in accordance with the State program amendment process before these practices are approved in Pennsylvania.

There are two parts to this required amendment:

The first part requires that Pennsylvania define the point at which seeding, fertilization, irrigation, or rill and gully repairs cease to be augmentative, subject to the 5-year extended liability period, and the point at which it may be considered non-augmentative normal husbandry practices. The second part requires that, in accordance with 30 CFR 816.116(c)(4), before selected husbandry practices can be categorized as “normal husbandry practices” they are required to be documented as usual or expected practices customarily performed to ensure vegetative success, and secondly reviewed and approved through the State program amendment process. This includes all management practices that are categorized as “normal husbandry practices,” such as seeding, fertilization, irrigation or the repair of rills and gullies.

To resolve the first part of this required amendment, PADEP has clarified that 25 Pa. Code 86.151(d) includes selective husbandry practices that do not restart the 5-year liability

period and also provided that practices that go beyond normal conservation practices will extend the liability period accordingly. OSM acknowledges that 25 Pa. Code 86.151(d) defines selective husbandry practices that do not restart the 5-year liability period as pest and vermin control, pruning, repair of rills and gullies or reseeding or transplanting or both that constitute normal conservation practices within the region for similar land uses. Further, with the disapproval of the word “augmented,” Pennsylvania’s regulations at Section 86.151(d) provide further guidance on when seeding, fertilization, irrigation and repair of rills and gullies would require extending the period of liability. That is, when those activities “exceed those normally applied in maintaining use or productivity of comparable unmined land in the surrounding area.” Because Pennsylvania’s regulations define the point at which practices cease to be selective normal husbandry, and become subject to liability extension, as indicated above, the Pennsylvania program is no less effective than similar guidance provided in the Federal program at 30 CFR 816/817.116(c)(4).

To resolve the second part of the required amendment, PADEP asserts that they have not approved any alternative selective husbandry practices (for use on individual permits, clarification added), and in the event additional “nonaugmentative normal husbandry practices” are identified (beyond those already discussed at Section 86.151(d), clarification added), they will be submitted to OSM in accordance with the state program amendment process before approval by Pennsylvania. As a result of these discussions, PADEP is requesting that OSM remove the required amendment at 30 CFR 938.16(ggg).

### *30 CFR 938.16(kkk)*

After further review, OSM has determined that the required program amendment at 30 CFR 938.16(kkk) is moot as a result of OSM’s clarification of affected areas as discussed in the final rule dated November 8, 1988 (53 FR 45190–45214).

On April 8, 1993 (58 FR 18149), OSM codified an amendment at 30 CFR 938.16(kkk) directing PADEP to submit a proposed amendment to 25 Pa. Code Section 88.1 requiring that the definition of affected area include all roads that receive substantial use and are substantially impacted by the mining activity.

In 1979, OSM issued rules that defined the term affected area to include any land upon which surface mining

activities or underground mining activities are conducted or located. This definition did not exclude public roads. However, on April 5, 1983, OSM adopted a revised definition of the term affected area to exclude public roads from this definition and provided three tests for exclusion, one of which was the substantial public use (more than incidental) test which required that if a road has substantial public use it would be excluded as a public road. This rule was challenged (known as the Flannery Decision, July 15, 1985) as it imposed the "more than incidental" public use test in determining whether a public road is part of the affected area and improperly excluded from regulation some public roads which are included in the statutory definition of surface coal mining operations. This rule was remanded because the coverage of this exception was related to public use rather than mining use. In 1986, OSM suspended the definition of affected area to the extent that it excludes public roads which are included in the definition of "surface coal mining operations." Further, the suspension had the effect of including, in the definition of affected area, all lands that are affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of regulated activities or for haulage.

In the November 8, 1988 (53 FR 45190–45214—known as the "road rule"), final rule, OSM first declined to revise the definition of affected area because the definition of road is clear on its own terms. Second, OSM declined to retain a reference to affected area in the definition of road on the basis that it would not affect the jurisdiction over roads. Third, OSM stated that its intention was not to automatically extend jurisdiction into the existing public road network, but that the regulatory authorities should make decisions on a case-by-case basis. This rule provides the latest and most definitive framework provided by the Secretary.

To the extent that OSM is requiring PADEP to include all roads that receive substantial use and are substantially impacted by the mining activity in the definition of affected area at 25 Pa. Code Section 88.1, this required amendment at 30 CFR 938.16(kkk) is moot, thus OSM is proposing to remove it in accordance with the clarification provided by the November 8, 1988, final rule.

### 30 CFR 938.16(III)

OSM required that Pennsylvania submit a proposed amendment to Section 88.1 to require that the

definition of access road include all roads that are improved or maintained for minimal and infrequent use and that the area of the road is comprised of the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches. (58 FR 18149–18161—PA803.20) Further review, indicated that Pennsylvania provides for an additional definition of *road* at 25 Pa. Code 88.1. In that definition, road includes the following:

\* \* \* A road consists of the entire area within the right-of-way, including the roadbed shoulders, parking and roadside area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or surface coal mining activities, including use by coal hauling vehicles leading to transfer, processing or storage areas.

The second part of this amendment requires that PADEP also include in the definition of access roads: "that area of the road comprised of the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches." PADEP's definition of "road" in 25 Pa. Code 88.1 includes this required language. As such, we are proposing to remove our required amendment at 30 CFR 938.16(III) because when the definitions of access road and road are read together, they appear to be no less effective than the Federal counterparts at 30 CFR 701.5 and 816.50(a).

### 30 CFR 938.16(qqq)

PADEP requested the removal of 30 CFR 938.16(qqq) based on the fact that the Pennsylvania program provides sufficient safeguards to assure that renewals filed under 25 Pa. Code 86.55(j) are required to meet the public notice and participation requirements, and that coal mining will not continue after the permit expiration date, thus making the provision not inconsistent with section 506(d)(3) of SMCRA and no less effective than 30 CFR 774.15(b).

On November 7, 1997 (62 FR 60169–60177), OSM issued a final rule which included the findings for two provisions at 25 Pa. Code 86.55(i) and 86.55(j). The provision at Section 86.55(i) allows for a permittee to provide a written notice to the PADEP in lieu of submitting a complete renewal application if, after the permit expiration date, the remaining surface mining activities will consist solely of reclamation. Conversely, Section 86.55(j) states that if a permit renewal application is filed

under Section 86.55(i) and the permittee subsequently determines that coal extraction, coal preparation, coal refuse disposal will occur or treatment facilities will be required after the permit expiration date, a renewal application shall be submitted prior to these activities.

As a result of this review, OSM required Pennsylvania to submit a proposed amendment to Section 86.55(j), or otherwise amend its program, to require that any applications for permit renewal be submitted at least 120 days before the permit expiration date. This requirement was codified at 30 CFR 938.16(qqq).

The two counterparts to the Federal program apply at section 506(d)(3) of SMCRA and 30 CFR 774.15(b). In an effort to determine whether this required amendment can be resolved, OSM's Harrisburg staff reviewed prior OSM interpretations regarding this issue that may have been published after the codification of this required amendment. OSM published a final rule to the Kentucky Program (May 10, 2000, 65 FR 29949–29953) pertaining to the issuance of Notices of Violation for failure to submit a timely renewal application. The timeliness in this rule refers to 120 days. On pages 29951 and 29952, OSM, in response to comments, provided the following statements:

Section 506(d)(3) does not, however state that the consequences of failure to comply with the 120 day deadline must be that the renewal cannot be granted under any circumstance, such as after the permittee submits an untimely application.

We do not agree, however, that allowing the filing of a late renewal application violates section 506(d)(3). Instead, we believe this provision is sufficiently flexible to allow consideration of untimely applications, so long as the permit renewal procedures, which include public participation, are properly followed.

However, we expect that we could approve a State program amendment that allows expired permits to be renewed, assuming all other renewal requirements are met, and assuming that mining is not permitted to resume until the renewal application is granted.

As indicated in this excerpt of the May 10, 2000, final rule, OSM believes that section 506(d)(3) of SMCRA is flexible to allow untimely applications as long as the permit renewal procedures are followed regarding public participation, with the assumption that mining is not permitted to resume until the renewal application is granted.

Further Section 86.55(c) requires that applications for renewal of a permit as established in this chapter shall be filed

with the PADEP at least 180 days before the expiration date of the particular permit in question. Written notices filed in accordance with Section 86.55(i) must also be filed at least 180 days before the expiration date of the permit. Section 86.55(j) provides authority for a permittee, who has already filed a written notice under Section 86.55(i), to submit a renewal for mining if they subsequently determine that coal mining operations will continue after permit expiration. However, Section 86.55(i) restricts this authority by stating that if the reclamation only renewal has been granted, a new permit must be obtained. Section 86.55(j) does not allow coal extraction, preparation, refuse disposal, or land excavation for those purposes to occur after the permit expiration date until the renewal application is approved by the PADEP. Section 86.55(d) requires all applications for renewal to comply with the public notification and participation requirements of Section 86.31. Pennsylvania also further implements 86.31 through a technical guidance document (563–2100–216). This guidance document further explains that public notice and public participation requires at least 60 days to complete (30 days for newspaper notification and 30 days for comments following the final of four weeks of notices), therefore, a renewal application that is filed less than 60 days prior to the expiration date, in accordance with Section 86.55(j), would automatically result in a shut down of coal mining operations.

Pennsylvania asserts that its program provides sufficient safe guards, as previously discussed, to assure that renewals filed under Section 86.55(j) are required to meet the public notice and participation requirements, and that coal mining will not continue after the permit expiration date. As a result of the findings above, Section 86.55(j) does not appear to be inconsistent with section 506(d)(3) of SMCRA and PADEP asserts that it is no less effective than 30 CFR 774.15(b). Therefore, Pennsylvania asserts, the required amendment at 30 CFR 938.16(qqq) has been satisfied and should be removed.

#### 30 CFR 938.16(ttt)

PADEP requested the removal of 30 CFR 938.16(ttt) based on the fact that the Pennsylvania program does not allow for noncoal waste to be deposited in a coal refuse pile or impounding structure.

On November 7, 1997 (62 FR 60169–60177), OSM issued a final rule requiring Pennsylvania to submit a proposed amendment to 25 Pa. Code

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.

In its final rule, OSM required Pennsylvania to change its regulations at Section 88.321, however, these performance standards are exempt in accordance with section 529 of SMCRA which authorizes the Secretary to issue separate regulations for anthracite coal surface mines.

Pennsylvania is still required to provide evidence that 25 Pa. Code 90.133 is no less effective than its Federal counterpart at 30 CFR 816.89(c) which states that:

At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or storage area.

OSM, in its final rule, was particularly concerned that the provision at Section 90.133 appears to only prohibit the listed materials and other waste materials with low ignition points, rather than specifying that all noncoal materials are prohibited to be deposited in a refuse pile or impounding structure.

Pennsylvania asserts that the burning of coal refuse sites is a serious environmental liability and the inclusion of language regarding materials with low ignition points is meant to emphasize the need to restrict the presence of combustible materials that could cause the coal refuse to ignite. It was not intended to nor does it imply that other waste materials are acceptable for disposal at coal refuse sites.

The materials that are acceptable for disposal are addressed in its Coal Refuse Disposal Control Act (52 P.S. 30.51) and materials that do not meet the definition of “coal refuse” must be disposed of in accordance with Pennsylvania’s Solid Waste Management Act (SWMA), 35 P.S. 6018.101 *et seq.* and PADEP’s Municipal and Residual Waste regulations (25 PA Code Chapters 271–299). The SWMA prohibits storage or disposal of solid waste (which includes municipal, residual or hazardous waste) unless such storage or disposal is consistent with and authorized by the SWMA and the implementing rules and regulations of PADEP. PADEP’s regulations prohibit a person from operating a waste disposal facility unless the person has obtained a permit for the facility from the PADEP. In accordance with 25 Pa. Code Sections 271.201 and 287.101, the definitions of

municipal and residual waste are quite broad and include all wastes from mining except coal refuse as defined in the Coal Refuse Disposal Control Act. For example, the term “residual waste” is defined as: “Garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining and agricultural operations; and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility \* \* \* The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act \* \* \*” The definitions of “municipal waste” and “hazardous waste” are also noted at Sections 271.1 and 287.1.

A review of the definitions in the Coal Refuse Disposal Control Act and Chapter 90, show the restrictive nature of PADEP’s definition of “coal refuse” and the restrictive nature of coal refuse disposal. Moreover, the PADEP interprets these definitions strictly. If a material is not coal refuse, it is not permissible to be disposed of at a coal refuse disposal site. Only coal refuse can be disposed of at a coal refuse site. The materials identified in Section 90.133 are residual wastes, and as such, would be required to be sent to an approved landfill or other appropriate disposal area (such as a recycling center). The definitions from 25 Pa. Code Section 90.1 are implemented in accordance with the Coal Refuse Disposal Control Act (52 P.S. Section 30.51), that also includes definitions at Section 30.53 that define coal refuse and related coal refuse activities.

As explained above, PADEP asserts that protections are provided throughout the Pennsylvania program prohibiting noncoal materials to be deposited on a coal refuse site or impounding structure. Further, this required amendment should be removed.

### III. Public Comment Procedures

In accordance with 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we remove the required amendments, as proposed, these approvals will become part of the Pennsylvania program. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

### Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations.

### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: PA-146-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Pittsburgh Field Division's Harrisburg Office at (717) 782-4036.

### Availability of Comments

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

### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time on June 7, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

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

present in the audience who wish to speak, have been heard.

### Public Meeting

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

## IV. Procedural Determinations

### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

### Executive Order 12866—Regulatory Planning and Review

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

### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse

effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

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

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

### National Environmental Policy Act

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

### Paperwork Reduction Act

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

*Regulatory Flexibility Act*

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

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 2006.

**H. Vann Weaver,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E6-7815 Filed 5-22-06; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF DEFENSE****Department of the Army; Corps of Engineers****33 CFR Parts 325 and 332****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 230**

[EPA-HQ-OW-2006-0020; FRL-8173-4]

**RIN 0710-AA55**

**Compensatory Mitigation for Losses of Aquatic Resources**

**AGENCIES:** U.S. Army Corps of Engineers, DoD; and Environmental Protection Agency.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On March 28, 2006, the U.S. Army Corps of Engineers (the Corps) and the Environmental Protection Agency (EPA) published a proposed rule to revise regulations governing compensatory mitigation for activities authorized by permits issued by the Department of the Army. The Corps and EPA announce the extension of the public comment period for this proposed rule until June 30, 2006. The 30-day extension of the comment period is a result of requests from a number of entities to allow more time to comment on the proposed rule. Comments previously submitted need not be resubmitted, as they have already been incorporated into the public record and will be fully considered in the final rule. **DATES:** Public comments are now due by June 30, 2006.

**ADDRESSES:** You may submit comments, identified by docket number EPA-HQ-OW-2006-0020 and/or RIN 0710-AA55, by any of the following methods:

- Federal eRulemaking Portal (recommended method of comment submission): <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail:

[ow-docket@epamail.epa.gov](mailto:ow-docket@epamail.epa.gov). Include the docket number, EPA-HQ-OW-2006-0020, and/or the RIN number, 0710-AA55, in the subject line of the message.

- Mail: USEPA Docket Center, Attention Docket Number EPA-HQ-OW-2006-0020, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: USEPA Docket Center, Room B102, EPA West, Attention: Docket Number EPA-HQ-OW-2006-0020, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Instructions for submitting comments are provided in the proposed rule published on March 28, 2006 (71 FR 15520). Consideration will be given to all comments received by June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson at 202-761-4922 or by e-mail at [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil), or Mr. Palmer Hough at 202-566-8323 or by e-mail at [mitigationrule@epa.gov](mailto:mitigationrule@epa.gov). Information can also be found at the EPA compensatory mitigation Web page at: <http://www.epa.gov/wetlandsmitigation>.

**SUPPLEMENTARY INFORMATION:** In the March 28, 2006, issue of the **Federal Register** (71 FR 15520), the Corps and EPA published a proposed rule revising regulations governing compensatory mitigation for activities authorized by permits issued by the Department of the Army. The proposed regulations are intended to establish performance standards and criteria for the use of permittee-responsible compensatory mitigation and mitigation banks, and to improve the quality and success of compensatory mitigation projects for activities authorized by Department of the Army permits. The proposed regulations are also intended to account for regional variations in aquatic resource types, functions, and values, and apply equivalent standards to each type of compensatory mitigation to the maximum extent practicable. The proposed rule includes a watershed approach to improve the quality and success of compensatory mitigation projects in replacing losses of aquatic resource functions, services, and values resulting from activities authorized by Department of the Army permits.

Several entities have requested an extension of the comment period for the proposed rule. The Corps and EPA find that a 30-day extension of the comment period for this proposed rule is warranted. Therefore, the comment period for this proposed rule is extended until June 30, 2006.