

vessels are required to report their arrival pursuant to § 4.2, CBP regulations (19 CFR 4.2).

Generally, foreign-flag yachts entering the United States are required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States. However, as provided in § 4.94(b), CBP regulations (19 CFR 4.94(b)), CBP may issue cruising licenses to pleasure vessels from certain countries if it is found that yachts of the United States are exempt from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees) in those countries.

If a foreign-flag yacht is issued a cruising license, the yacht, for a stated period not to exceed one year, may arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. Upon arrival at each port in the United States, the master of a foreign-flag yacht with a cruising license must report the fact of arrival to the appropriate CBP office. A list of countries whose yachts are eligible for cruising licenses is set forth in § 4.94(b).

By an undated letter received on May 1, 2007, the Department of State informed the Chief, Cargo Security, Carriers and Immigration Branch, CBP, that the British Embassy has advised that the listing for Great Britain in § 4.94(b) requires updating. The Department of State recommends that the reference in § 4.94(b) for Great Britain be revised to read as follows:

United Kingdom and the Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands.

Additionally, the Department of State recommends that Saint Vincent and the Grenadines; and Saint Kitts and Nevis (formerly the Federation of Saint Christopher and Nevis) be listed separately from the United Kingdom as they are now independent countries.

The Chief, Cargo Security, Carriers and Immigration Branch has found, based on the information provided, that the reciprocity required in § 4.94(b) has been established with respect to the above-referenced countries effective May 1, 2007. Accordingly, under the authority of 46 U.S.C. 60504, yachts from the above-referenced countries

used only for pleasure may arrive at and depart from the ports of the United States and cruise in the waters of the United States without payment of any duties or fees. The list of countries in § 4.94(b) is being revised in this final rule document as discussed above. The authority to amend this section of the CBP regulations has been delegated to the Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

#### **Inapplicability of Notice and Delayed Effective Date**

Because these amendments merely implement a statutory requirement and confer a benefit upon the public, CBP has determined that notice and public procedure are unnecessary pursuant to section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)). Further, for the same reasons, good cause exists for dispensing with a delayed effective date under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)).

#### **Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

#### **Signing Authority**

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

#### **List of Subjects in 19 CFR Part 4**

Customs duties and inspection, Maritime carriers, Vessels, Yachts.

#### **Amendments to the CBP Regulations**

■ For the reasons set forth above, part 4 of title 19 of the Code of Federal Regulations (19 CFR part 4) is amended as set forth below.

#### **PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

■ 1. The general authority citation for part 4 and the specific authority for § 4.94 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

\* \* \* \* \*

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. 60504;

\* \* \* \* \*

#### **§ 4.94 [Amended]**

■ 2. In § 4.94, the list of countries in paragraph (b) is amended by removing the words "Great Britain (including Turks and Caicos Islands; St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, the St. Christopher-Nevis-Anguilla Islands and the British Virgin Islands)" and adding, in appropriate alphabetical order, the words "Saint Vincent and the Grenadines", "Saint Kitts and Nevis," and "United Kingdom and the Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands".

Dated: October 9, 2008.

**Joanne R. Stump,**

*Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.*

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**BILLING CODE 9111-14-P**

#### **DEPARTMENT OF THE INTERIOR**

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

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

[PA-152-FOR; Docket ID: OSM-2008-0019]

#### **Pennsylvania Regulatory Program**

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

**ACTION:** Final Rule; rescission of a modified required amendment.

**SUMMARY:** We are announcing a rescission of a required amendment that we imposed, in modified form, upon the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We had modified a previous version of the required amendment, which we originally imposed in 1991. The United States Court of Appeals for the Third Circuit, and the United States District Court for the Middle District of Pennsylvania, on remand from the Third Circuit, set aside our termination of the 1991 required amendment. We are rescinding the modified required amendment because under those court actions, no action on our part was necessary to implement the Courts' orders.

**DATES:** *Effective Date:* October 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Chief, Pittsburgh Field

Division, Telephone: (717) 782-4036, e-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. The Modified Required Amendment
- III. The Basis for Rescission of the Modified Required Amendment
- IV. OSM's Decision
- V. 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.

From 1982 until 2001, Pennsylvania's bonding program for surface coal mines, coal refuse reprocessing operations and coal preparation plants, was funded under an Alternative Bonding System (ABS), which included a central pool of money (Surface Mining Conservation and Reclamation Fund) used for reclamation, to supplement site-specific bonds posted by operators for each mine site. This pool was funded by a per-acre reclamation fee paid by operators of permitted sites.

In 1991, our oversight activities determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation and we determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites under its purview. As a result, on May 31, 1991, we imposed the required amendment codified at 30 CFR 938.16(h), 56 FR 24687. That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee would assure that its Surface Mining Conservation and Reclamation Fund (Fund) could be operated in a manner that would meet the ABS requirements contained in 30 CFR 800.11(e). After a decade of trying to address the problems with the ABS, the Pennsylvania Department of Environmental Protection (PADEP) terminated the ABS in 2001 and began converting active surface coal mining permits to a Conventional

Bonding System (CBS) or "full-cost" bonding program. This CBS requires a permittee to post a site specific bond in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture.

OSM published a final rule on October 7, 2003 removing the required amendment at 30 CFR 938.16(h) on the basis that the conversion from an ABS to a CBS rendered the requirement to comply with 30 CFR 800.11(e) moot. Subsequent to these OSM actions, a lawsuit was filed in the U.S. District Court for the Middle District Court of Pennsylvania, *Pennsylvania Federation of Sportsmen's Clubs Inc. (PFSC) et al. v. Norton No. 1:03-CV-2220*. The district court ruled in OSM's favor, but was reversed by the United States Court of Appeals for the Third Circuit. Subsequently, on November 1, 2007, the District court set aside our October 7, 2003, termination of the 1991 required amendment. The appellate court's decision is discussed in the section below.

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, 938.13, 938.15 and 938.16.

#### II. The Modified Required Amendment

On August 2, 2007, the United States Court of Appeals for the Third Circuit decided *PFSC v. Kempthorne*, 497 F.3d 337 (3rd Cir. 2007). At issue, relevant to this notice, was whether OSM properly terminated the requirement that Pennsylvania demonstrate that its Surface Mining Conservation and Reclamation Fund was in compliance with 30 CFR 800.11(e).

The Third Circuit concluded: "while it is true that the 'ABS Fund' continues to exist in name, it no longer operates as an ABS, that is, as a bond pool, to provide liability coverage for new and existing mining sites." 497 F.3d at 349. However, the Court went on to conclude that "800.11(e) continues to apply to sites forfeited prior to the CBS conversion." *Id.* at 353. In commenting further on 30 CFR 800.11(e), the Court stated "The plain language of this provision requires that Pennsylvania demonstrate adequate funding for mine discharge abatement and treatment at all ABS forfeiture sites." *Id.* at 354.

Because the Third Circuit in *PFSC v. Kempthorne, Id.*, reversed the District Court, which had upheld our termination of the 1991 required

amendment at 30 CFR 938.16(h), we decided to impose a modified version of amendment "(h)," which we believed was fully consistent with the rationale of the Third Circuit's decision while accounting for circumstances which had changed since 1991. Issuance of this modified required amendment was announced in the July 8, 2008, **Federal Register** at 73 FR 38918. It is this modified version of the required amendment that we are hereby rescinding in this action.

#### III. The Basis for Rescission of the Modified Required Amendment

After we published the modified version of 30 CFR 938.16(h), the Pennsylvania Federation of Sportsmen's Clubs, along with the other Plaintiffs, filed a Motion to Reopen, to Substitute Party, and for Contempt in the matter of *PFSC v. Kempthorne, No. 1:03-CV-2220 (M.D. Pa.)*. The Plaintiffs alleged that the Federal Defendants were in contempt of the district court's November 1, 2007, order on remand from the Third Circuit decision in *PFSC v. Kempthorne*, 497 F.3d 337 (3rd Cir. 2007), because they revised 30 CFR 938.16(h) from its 1991 form. The Plaintiffs contend that the Federal Defendants disobeyed the district court's order, which the Plaintiffs claim did not authorize any modification to the required amendment. *PFSC v. Kempthorne, No. 1:03-CV-2220 (M.D. Pa.)* (Motion to Reopen, to Substitute Party, and for Contempt filed July 16, 2008)

In order to resolve the matter of the contempt proceeding, and without admitting any liability with respect to the Plaintiffs' allegations put forth in said proceeding, we have decided to rescind the revised version of the required amendment at 30 CFR 938.16(h). Thus, any potential conflict with the district court's November 1, 2007, Order on Remand, which set aside our decision to remove the 1991 required amendment, is hereby removed.

#### IV. OSM's Decision

Based on the above discussion, we hereby rescind the required amendment at 30 CFR 938.16(h), as it was revised in the July 8, 2008, **Federal Register** at 73 FR 38918.

This rule is being issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. In view

of the litigation and court order, we have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. For the same reason, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**. This rescission is being made effective immediately in order to encourage Pennsylvania to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## V. 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 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 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. 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 Government*

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 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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

### *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 amendment 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. 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 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 government 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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2008.

**Thomas D. Shope,**  
Regional Director, Appalachian Region.

■ 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. In § 938.16, remove paragraph (h).

[FR Doc. E8-24477 Filed 10-14-08; 8:45 am]

BILLING CODE 4310-05-P

**DEPARTMENT OF DEFENSE****Department of the Navy****32 CFR Part 706****Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUC0604, are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special function as naval vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective October 15, 2008 and is applicable beginning 16 June 2008).

**FOR FURTHER INFORMATION CONTACT:**

Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUC0604 are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a), pertaining to the position of the masthead light or lights being located over the fore and aft centerline of the vessel; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Rule 27(b)(i), pertaining to the placement of three all-round lights in a vertical line and Annex I, paragraph 2(i)(ii), pertaining to the vertical separation of the Restricted Maneuvering Light Array lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment

for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Two, by adding, at the end of the table under the "Vessel" category, the following entry for Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUC0604:

■ B. In Table Four, Paragraph Sixteen by adding, at the end of the table under the "Vessel" category, the following entry for Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUC0604:

■ C. In Table Four by adding new paragraphs 23 and 24:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USV ....	11MUC0601, 11MUC0602, 11MUC0603, 11MUC0604.	0.40	.....	.....	.....	.....	.....	.....	.....

\* \* \* \* \*

**Table 4**

\* \* \* \* \*

16. \* \* \*

Vessel	Number	Obstruction angle relative ship's headings
USV .....	11MUC0601, 11MUC0602, 11MUC0603, 11MUC0604 .....	271° thru 278°.