



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA-166-FOR; Docket ID: OSM-2017-0008; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), approve an amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Pennsylvania program by adding language consistent with section 5 of the Bituminous Mine Subsidence and Land Conversation Act, which specifies circumstances where a finding of presumptive evidence of potential pollution under the Commonwealth's Clean Streams Law is not warranted.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Submission of the Amendment
- III. OSMRE's Findings

IV. Summary and Disposition of Comments

V. OSMRE's Decision

VI. Statutory and Executive Order Reviews

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 approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. 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, 938.13, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated August 4, 2017 (Administrative Record No. PA 899.00), the Pennsylvania Department of Environmental Protection (PADEP) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). On July 21, 2017, the Pennsylvania General Assembly enacted Act 32, which amended section 5 of the Commonwealth's Bituminous Mine Subsidence and Land Conservation Act (BMSLCA), 52 P.S. 1406.5, by specifying circumstances where a finding of presumptive evidence of potential pollution, as the term "pollution" is defined under the Commonwealth's Clean Streams Law, 35 P.S. 691.1 (Definitions), is not warranted. The specified circumstances appear in new subsections 5(i) and 5(j) (52 P.S. 1406.5(i), -(j)).

Act 32 also amended subsection 9a(d) of BMSLCA, 52 P.S. 1406.9a(d), to except 52 P.S. 1406.5(i) from the rule in subsection 1406.9a(d) prohibiting anything in BMSLCA from being construed to amend, modify, or otherwise supersede any standard contained in the Pennsylvania Clean Streams Law at 35 P.S. 691.1 et seq. Notably, the new sections of 52 P.S. 1406.5(i)-(j) are not excepted from the rule at 52 P.S. 1406.9a(d)(1) prohibiting any part of BMSLCA from being construed to amend, modify, or otherwise supersede the standards related to prevailing hydrologic balance in SMCRA. Finally, section 3 of Act 32 specified that the amendments to 52 P.S. 1406.5(i)-(j) apply only to permits issued after October 8, 2005.

We announced receipt of the proposed amendment in the March 12, 2018, *Federal Register* (83 FR 10647). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period was originally set to end on April 11, 2018. At the request of thirteen citizens, however, we reopened the public comment period and approved a request for a public hearing.

In a May 8, 2018, *Federal Register* notice (83 FR 20774), we erroneously stated that a public hearing would be held on May 1, 2018, with public comment period ending June 7, 2018. But in a May 16, 2018, *Federal Register* notice (83 FR 22607), we published a correction to the public hearing date. As corrected, the public comment period ended on June 15, 2018, and we held a public hearing on May 17, 2018, in Green Tree, Pennsylvania (Administrative record number PA 899.13). We received 55 substantive written comments and additional oral comments at a public hearing which are addressed in the “Public Comments” section of Part IV, “Summary and Disposition of Comments,” below.

III. OSMRE’s Findings

We are approving the amendment as described below. We made the following findings concerning Pennsylvania's amendment under SMCRA and the Federal regulations at 30 CFR 730.5, 732.15, and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov, searchable by the docket ID numbers referenced at the top of this notice.

Through Act 32, Pennsylvania added language to section 5 of BMSLCA, 52 P.S. 1406.5, specifying circumstances where a finding of presumptive evidence of potential pollution is not warranted. In particular, 52 P.S. 1406.5(i) states that, in a permit application to conduct underground bituminous coal mining operations, planned subsidence (that is, subsidence occurring in a predictable and controlled manner which is not predicted to result in the permanent disruption of premining existing or designated uses of surface waters) will not be considered presumptive evidence that the proposed operations have the potential to cause "pollution," as that term is defined in section 1 of the Clean Streams Law (P.L. 1987, No. 394, 35 P.S. 691.1 et seq.).

Act 32 provided language, at 52 P.S. 1406.5(j)(1), that section 52 P.S. 1406.5(i) only applies if (1) a person submits an application to conduct bituminous mining operations that specifically provides for the restoration of the premining range of flows and for restoration of premining biological communities in any waters of Pennsylvania predicted to be adversely affected by subsidence and (2) the application is approved by the Department. Act 32 further states, at 52 P.S. 1406.5(i)(1), that the referenced "restoration" must be consistent with the premining existing and designated uses of the waters of Pennsylvania.

The criteria for permit approval in Pennsylvania's administrative code appear in 25 Pa. Code 86.37. 25 Pa. Code 86.37(a)(3) currently provides that, to obtain a permit, an applicant must demonstrate that there is "no presumptive evidence of potential

pollution of the waters of this Commonwealth.” Act 32 specifies that planned subsidence in a predictable and controlled manner, which is not predicted to result in the permanent disruption of premining existing or designated uses of Pennsylvania surface waters, will not constitute evidence that the proposed bituminous coal mining operations have the potential to cause pollution as defined in section 1 of the Clean Streams Law.

While there is no Federal counterpart to 25 Pa. Code 86.37(a)(3), the most closely related provisions for underground mining are found in (1) 30 CFR part 784, which governs permit applications for underground mining and sets forth the minimum requirements for the reclamation and operation plans required of operators and (2) 30 CFR part 817, which sets forth operational performance standards. 30 CFR part 784 includes provisions identifying the information required in reclamation and operation plans submitted during the application process, including information relating to hydrologic conditions (30 CFR 784.14) and fish and wildlife resources (30 CFR 784.21).

For example, 30 CFR 784.14(g) requires that such plans identify the steps to be taken to minimize disturbance to the hydrologic balance from underground mining within and adjacent to the permit area and to prevent material damage to the hydrologic balance outside the permit area. Similarly, 30 CFR 817.41(a) requires that underground mining and reclamation activities be “conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses.” These provisions, including use of the term “minimize,” make clear that some amount of disturbance is permissible, provided it does not rise to the level of material damage.

PADEP, in approving applications for planned subsidence and addressing operational deficiencies, has historically interpreted the provisions in this manner. Act 32 codifies this interpretation and, contrary to the suggestions of several commenters, does

not authorize destruction of streams, as we further explain in our responses to public comments in section IV.

We find that the Pennsylvania program, even with the addition of Act 32, exceeds Federal standards. The proposed statutory language leaves intact the regulatory requirement in 25 Pa. Code 86.37(a)(3) that mining applicants demonstrate there is no presumptive evidence of potential pollution and provides that subsidence, done in a predictable and controlled manner that is not predicted to result in the permanent disruption of premining existing or designated uses of surface waters, is not presumptive evidence of potential pollution. We find this specification to be a proper exercise of regulatory authority given the broad language on presumptive evidence in the current version of 25 Pa. Code 86.37(a)(3).

Even with the addition of Act 32's specification that properly planned subsidence is not presumptive evidence of potential pollution, the Pennsylvania program remains more effective than the relevant Federal regulations, particularly 30 CFR 784.14, 784.21, and 817.41, as discussed below. It also remains more stringent than section 516 of SMCRA (30 U.S.C. 1266).

Specifically, 30 U.S.C. 1266 provides that mine operators must "minimize" disturbances to the prevailing hydrologic balance and "avoid" acid or other mine drainage. By contrast, Pennsylvania's Act 32 imposes an affirmative duty on permit applicants to demonstrate the absence of any "presumptive evidence of potential pollution," even while limiting the scope of what automatically qualifies as such presumptive evidence. Moreover, section 5(j) of Act 32 provides that this exemption from presumptive evidence of pollution is only available when the permit application provides for the restoration of the premining range of flows and restoration of premining biological communities in any waters predicted to be adversely affected by subsidence,

and that the restoration shall be consistent with the premining existing and designated uses of the waters of Pennsylvania.

Even as amended by Act 32, Pennsylvania's regulatory scheme promotes the core objective of 30 U.S.C. 1266(b)(9), which is to minimize disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface groundwater systems both during and after coal mining operations and during reclamation. Thus, the Pennsylvania regulatory scheme remains in accordance with SMCRA and consistent with (and more stringent than) the Federal regulations.

For these reasons, we are approving the proposed changes.

IV. Summary and Disposition of Comments

Public Comments

We announced the receipt of the proposed amendment in the March 12, 2018, *Federal Register* (83 FR 10647). In the same notice, we initially opened the public comment period through April 11, 2018, and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. As discussed in section II, above, the comment period was extended to June 15, 2018, and a public hearing was held in Green Tree, Pennsylvania, on May 17, 2018.

Public comments were received in writing and orally at the public hearing. Seven individuals spoke at the public hearing (three opposed to Act 32 and four in favor). Additionally, we received written public comments during the comment period. The substantive comments about the amendment that we received are summarized below, which also includes our responses. In addition, we received 62 non-substantive comments or comments that are beyond the scope of this amendment; no response to those comments are necessary. The comments are available in their entirety at www.regulations.gov.

Comment 1: This commenter opposed the amendment and raised specific concerns about the amendment's consistency with a premise in the Pennsylvania regulatory scheme that if someone can show that mining will cause irreparable stream damage, no permit will be issued.

OSMRE Response: We disagree with the commenter's characterization of the Pennsylvania program. Both before and after the enactment of Act 32, under the Pennsylvania program, the operator is required to demonstrate the absence of presumptive evidence of pollution. The proposed amendment simply adds that, if planned subsidence will be done in a predictable and controlled manner and is not predicted to result in the permanent disruption of streams, then it will not be considered presumptive evidence of pollution under the Clean Streams Law. In addition, this exemption is only available when the operator's application provides for the restoration of the premining range of flows and restoration of premining biological communities predicted to be adversely affected by subsidence, and that such restoration is consistent with the premining existing and designated uses of Pennsylvania waters. Furthermore, to undertake planned subsidence, an operator must obtain approval from PADEP. This approval must be based on PADEP's technical review of applications and supporting data. Under section 5(j) of Act 32, PADEP must conclude that the application adequately "provide[s] for" restoration of premining flows and premining biological communities.

Comment 2: Commenter stated that Act 32 fails to regulate and protect the common resources of State streams.

OSMRE Response: We disagree with the commenter's assessment of the proposed amendment; Act 32 clarifies the Pennsylvania regulatory program, and, operating in conjunction with the existing regulatory scheme, the program is in accordance with SMCRA and consistent with the Federal regulations that govern the protections for streams potentially impacted by coal mining. Section 5(j) ensures that

permit applications specifically “provide for” restoration of the premining range of flows and for restoration of premining biological communities. It also directs that “restoration” be consistent with the premining existing and designated uses of the water resources. These additional regulatory requirements have no specific counterparts in the Federal regulations, and we find they make the Pennsylvania program more stringent than SMCRA in regard to hydrologic balance. Before enactment of Act 32, planned subsidence was allowable under long-standing practice, supported by PADEP’s view that it does not constitute presumptive evidence of pollution under the Clean Streams Law. Act 32 codifies that practice, which clarifies the law for operators, regulators, and the public. As noted, it also adds a safeguard by requiring operators that seek approval of planned subsidence to submit applications that “provide for” restoration of premining flows and premining biological communities. Additional safeguards are discussed in the responses to comments below.

Comment 3: Commenter claimed that most longwall mines dewater the streams above them, and this dewatering is often complete. Commenter claimed that, when this occurs, industry is unable to restore both the premining flow and the premining aquatic biology, which means that the damage to streams is often not reparable, and the water chemistry irreparably affected.

OSMRE Response: Under Federal and Pennsylvania law both before and after Act 32, “perfect” stream restoration is not required. Subsection 516(b)(1) of SMCRA (30 U.S.C. 1266(b)(1)) regulates surface effects of underground mining, requiring operators to adopt measures “consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible.” This standard is echoed in Pennsylvania law at 52 P.S. § 1406.5(e). In addition, subsection 516(b)(9) of SMCRA requires that activities be conducted to “minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage

to the hydrologic balance outside the permit area, and to support approved postmining land uses.” OSMRE’s regulations echo and reinforce these requirements. Under 30 C.F.R. 817.41, underground mining and reclamation activities must be “conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses.” As these provisions make clear, some amount of damage is permissible, provided it does not rise to the level of material damage. If it rises to material damage, remedies and enforcement mechanisms for addressing damage exist under the Pennsylvania program and the Federal regulations. *See, e.g.*, 25 Pa. Code § 86.211 (abatement orders); 25 Pa. Code § 86.194(b)(1)(i) (assessment of civil penalties for “damage or injury to the lands or to the waters . . . or their uses”); 30 CFR 843.11 (federal cessation orders, including imposition of “affirmative obligations” on the permittee to abate “imminent danger or significant environmental harm”). For all these reasons, we disagree with commenter’s suggestion that risk of dewatering or impacting water chemistry precludes approval of Act 32. In our oversight role, we will continue to monitor success with stream restoration following planned subsidence in accordance with the applicable standards.

Comment 4: Commenter pointed to proposed section 5(i), which adds planned subsidence to the circumstances where a finding of presumptive evidence of potential pollution is not warranted, and contended that operators will never predict permanent damage because there is “no solid evidence to assure [any disruption] won’t be permanent.”

OSMRE Response: Permit applications and supporting data are reviewed by PADEP technical staff. If an application predicts no permanent damage but the operational plans or supporting data (considered in light of site geology and hydrology) fail to support that prediction, PADEP would be obligated to disapprove the application.

If an interested party objects to how PADEP exercises its discretionary authority and applies its technical expertise in approving planned subsidence, legal mechanisms exist for challenging PADEP's approval, including appeal to Pennsylvania's Environmental Hearings Board. Commenters' concern that permanent damage is never predicted (and the implication that it would be carelessly approved) do not make Act 32 less stringent or less effective than SMCRA or its implementing regulations, which is the standard governing OSMRE approval of state program amendments.

Comment 5: Commenter stated that the amendment is an attempt to ensure that environmental groups cannot argue that a longwall mine that predicts dewatering damage should be denied a permit.

OSMRE Response: Permit applications and supporting data are reviewed by PADEP technical staff. If an application predicts no permanent damage but the operational plans or supporting data (considered in light of site geology and hydrology) fail to support that prediction, PADEP would be obligated to disapprove the application. If an interested party objects to the how PADEP exercises its discretionary authority and applies its technical expertise in approving the permit, legal mechanisms exist for individuals or groups to challenge PADEP's approval, including appeal to Pennsylvania's Environmental Hearings Board. We recognize the commenter may be referring to a recent appeal of a PADEP permitting decision before Pennsylvania's Environmental Hearings Board (Docket No. 2014-072-BP), in which the groups argued any stream subsidence is pollution within the meaning of the Clean Streams Law and that permit approval in such circumstances is unlawful. While the amendment may dissuade these groups from arguing in the future that subsidence is pollution, the fact is the legislature simply agreed with PADEP's view (consistent with long-standing practice) that properly planned subsidence is not pollution within the meaning of the Clean Streams Law, and it enacted Act 32 to make that point explicit. OSMRE has no reason or authority to

question the motives of the legislature or PADEP in submitting the proposed amendment. OSMRE must assure that a proposed amendment is in accordance with SMCRA and consistent with the relevant Federal regulations. In the case of Act 32, we conclude that it is.

Comment 6: Commenters opposed the amendment and argue that Act 32 was a response to the litigation discussed in comment 4, that it was intended to extinguish the arguments of the conservation organizations, and that the Pennsylvania legislature enacted Act 32 to “weaken the protections afforded to Pennsylvania streams and allow destruction of public natural resources for private profit.”

OSMRE Response: We refer commenters to our response to comment 4, in particular, our statement that it is our duty to assess the proposed amendment to ensure that it is in accordance with SMCRA and consistent with the Federal regulations, which Act 32 is.

Comment 7: Commenters opined that the provisions in Act 32 are not in accordance with SMCRA and its implementing regulations because Act 32 does not adequately protect waters of the Commonwealth and their existing and designated uses.

OSMRE Response: We disagree with commenters’ conclusion that Act 32 does not adequately protect streams. For the reasons stated in our response to comment 2, we believe it enhances stream protection over the level required by SMCRA and the Federal regulations. Under the proposed amendment, an operator seeking authorization for planned subsidence must submit an application that “provides for” restoration of the “premining range of flows” and restoration of “premining biological communities” in waters predicted to be adversely affected by subsidence, a provision that has no counterpart in the Federal regulations. Pennsylvania’s previously approved program remains in effect, and Act 32 enhances that program, while codifying PADEP’s long-standing regulatory interpretation of what constitutes evidence of presumptive pollution,

which gives Act 32 a limited substantive effect. If commenters are concerned that the existing Pennsylvania program is inadequate, SMCRA provides other avenues for that challenge; however, for this amendment, we are only looking at the changes made to the Pennsylvania program by Act 32, which are in accordance with SMCRA and consistent with the Federal regulations.

Comment 8: Commenters stated that Act 32 was enacted for the sole benefit and private profit of the coal mining industry, and they alleged that article III, section 32, of the Pennsylvania Constitution prohibits such “special laws.” Another commenter reiterated this concern and provided that “special laws” include laws granting special privileges to a “select industry,” which does not serve to promote the general welfare of the public.

OSMRE Response: OSMRE has no authority to review whether acts of the Pennsylvania legislature violate the Pennsylvania Constitution. Our review of proposed amendments to the Pennsylvania program is limited to ensuring that such changes are in accordance with SMCRA and consistent with the Federal regulations.

Comment 9: Commenters stated that Act 32 attempts to exempt predicted impairment of streams from the Clean Streams Law and that this contradicts Federal water quality standards required under the Clean Water Act.

OSMRE Response: We disagree with this characterization of the amendment. The Pennsylvania program, with the addition of Act 32, requires operators to submit applications; these applications now must include the supporting analysis and data that was contained in PADEP’s 2005 Technical Guidance Document (TGD) and must “provide for” the restoration of premining flows and premining biological communities. The TGD set out PADEP’s process for evaluating the sufficiency of mitigation plans for mining operations predicting flow loss to ensure that mitigation and restoration measures

would restore protected uses. Act 32 codifies this process into law and eliminates PADEP discretion to deviate from its now-codified interpretation.

Act 32 also makes clear that planned subsidence, which meets existing regulatory requirements (as well as the regulatory requirements in Act 32), is not presumptive evidence of pollution. However, technical staff at PADEP still must apply their expertise to the applications and supporting data to make predictive judgments in approving permits allowing planned subsidence to ensure the regulatory requirements are met. They make this determination within the construct of the approved Pennsylvania program, which includes various regulations that we have found to be consistent with Federal standards for protecting the hydrologic balance at coal mining sites. In particular, the Pennsylvania program has been found to be consistent with the Federal regulation at 30 CFR 817.42 (Water quality standards and effluent limitations). Section 817.42 provides that water discharges “shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the [EPA] set forth in 40 CFR part 434,” and this includes the Clean Water Act. Act 32 makes no change to this part of the Pennsylvania program’s regulatory scheme pertaining to water quality and effluent limitations, except to the extent it strengthens stream protection through the specific requirements of section 5(j) of the Act (in particular, the requirement that an application “provide for” restoration of premining flows and premining biological communities). As these prior regulations in the Pennsylvania program require water discharges be in compliance with the Clean Water Act, we fail to see how Act 32 would contradict this existing requirement.

Comment 10: Commenters stated that Act 32 creates an exception to State water quality standards and antidegradation standards, where operators predict subsidence-induced impairment to uses of overlying streams. According to commenters, such revisions to state water quality programs are not effective until approved by EPA under

40 C.F.R. 123.62; therefore, this requirement necessitates, at the very least, consulting with EPA before making a decision approving the amendment.

OSMRE Response: As explained in the response to comment 9, Act 32 neither revises water quality standards or antidegradation standards nor does it create any exceptions or exemptions. Further, OSMRE did seek EPA comment, but EPA declined to comment.

Comment 11: Commenters opined that the amendment is incompatible with PADEP's duties as a trustee of Pennsylvania's public natural resources under article I, section 27 of the Pennsylvania Constitution, which protects individual environmental rights of citizens (citing *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013)).

OSMRE Response: OSMRE has no authority to review whether acts of the Pennsylvania legislature violate the Pennsylvania Constitution. Our review of proposed amendments to the Pennsylvania mining program is limited to ensuring that the proposed amendments are in accordance with SMCRA and consistent with the Federal regulations.

Comment 12: Commenter raised concerns that the amendment would allow "predicted adverse stream impacts . . . with no assurance that those adverse effects will ever be corrected."

OSMRE Response: The commenter misstates the relevant standard. Under 30 CFR 817.41(a), mining activities must be conducted "to minimize disturbance of the hydrologic balance" and to "prevent material damage to the hydrologic balance outside the permit area." As discussed in the response to comment 3, some amount of damage is permissible, provided it does not rise to the level of material damage.

Comment 13: Commenter stated that the amendment allows damage to streams and employs "Orwellian doublespeak to declare that such damages are not a violation of the Pennsylvania Clean Streams Law."

OSMRE Response: We refer the commenter to the responses in comments 3, and 12. SMCRA does not prohibit adverse impacts to streams; it only prohibits those impacts that rise to the level of material damage outside of the permit area. Act 32 does not change the standard by which we review program amendments for consistency with the Federal regulations.

Comment 14: Commenter stated that accurate predictions as to whether undermined streams are likely to experience significant flow loss still are not being made, indicating that at least six streams had been irreparably damaged during the 2003-2008 period.

OSMRE Response: As discussed in response to the responses in comments 3, “perfect” stream restoration is not required under preexisting Pennsylvania and Federal law. SMCRA does not prohibit any impacts to streams. OSMRE cannot disapprove an amendment unless it is not in accordance with SMCRA or inconsistent with the Federal regulations.

Comment 15: Commenters noted that PADEP must prepare assessments on the effects of underground mining every five years and claimed that those assessments “consistently demonstrate” that damages from longwall mines have been increasing in numbers and severity over time and that repair of damage to “natural features particularly streams cannot be assured.” They cited a 2014 PADEP report that said the ability to repair stream damage “remains largely unknown.” Similarly, commenters stated that stream restoration “still is in its infancy” and does not have a “documented record of success.” Another commenter cited a 2012 report indicating that current stream restoration practices “cannot be assumed to provide demonstrable physical, chemical, or biological functional improvements” and cited additional studies, in 2002, 2003 and 2014 reaching similar conclusions.

OSMRE Response: As discussed in the response to comment 3, “perfect” stream restoration is not required under preexisting Federal law or even under the Pennsylvania program (either before or after the enactment of Act 32). SMCRA does not prohibit impacts so long as those impact do not rise to the level of material damage outside the permit area. OSMRE cannot disapprove an amendment unless it is not in accordance with SMCRA or inconsistent with the Federal regulations.

Comment 16: Because predicting restoration is difficult and because full restoration has a low chance of occurring, this commenter suggested that OSMRE should disapprove the amendment.

OSMRE Response: The relevant standard for OSMRE to approve a program amendment is whether the amendment is “in accordance with” SMCRA and “consistent with” the Federal regulations as those terms are defined in 30 CFR 830.5. As we explain in the Findings and in the response to comment 3, Act 32 meets these standards. The comment appears to ignore the role of PADEP’s expert technical staff who review and approve applications under the requirements of Pennsylvania’s approved program. As discussed in the response to comment 4, if an application predicts no permanent damage but the operational plans or supporting data (considered in light of site geology and hydrology) fail to support that prediction, PADEP would be obligated to disapprove the permit application.

Comment 17: Commenter stated that approval of this amendment would be contrary to 30 CFR 817.41, which directs that underground mining be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land use(s).

OSMRE Response: We disagree. Approving Act 32 does not change the standards for protecting the hydrologic balance in Pennsylvania’s approved program

below what is required in 30 CFR 817.41 and the other Federal regulations. As discussed in the response to comment 9 and elsewhere, Act 32 codifies PADEP's prior regulatory interpretation of what constitutes evidence of presumptive pollution and adds requirements that strengthen stream protections. In particular, section 5(j) of Act 32 requires that permit applications specifically "provide for" restoration of the premining range of flows and for restoration of premining biological communities, which is a standard above that found in the Federal regulations. Thus, the Pennsylvania program with Act 32 is no less stringent than SMCRA and no less effective than the Federal regulations with regard to the protection of the hydrologic balance.

Comment 18: Commenter opined that approving the amendment would violate three SMCRA regulations – (i) 30 CFR 783.10 (requiring that each applicant provide an adequate description of the environmental baseline), (ii) 30 CFR 784.14 (requiring baseline hydrologic information); and (iii) 30 CFR 783.2 (requiring that applicants provide a complete and accurate description of the environmental resources that may be impacted or affected by proposed underground mining activities) – because the amendment allows applicants to predict there will be no permanent disruption of premining uses and predicting is uncertain.

OSMRE Response: We disagree with the contention that Act 32 violates the cited provisions. As discussed above, Act 32 is more stringent than SMCRA and no less effective than the Federal regulations; Act 32 adds to the stream protections of SMCRA and makes no changes to the portions of the Pennsylvania program that give effect to the cited Federal regulations. In addition, the comment appears to ignore the role of PADEP's expert technical staff who review and approve each application under requirements of the approved Pennsylvania program. As discussed in the response to comment 4, if an application predicts no permanent damage but the PADEP expert technical staff who review the operational plans or supporting data (considered in light of

site geology and hydrology) determine that the application fails to support that prediction, PADEP would be obligated to disapprove the application.

Comment 19: Commenter stated that PADEP compiled no evidence to determine the reliability of such predictions, despite numerous requests to gather such evidence, and imposed no consequences on applicants who wrongly predicted no permanent damage.

OSMRE Response: We disagree. The commenter appears to ignore Act 32's narrow scope, which leaves the other provisions of the current Pennsylvania program intact while codifying PADEP's long-standing regulatory interpretation of what constitutes evidence of presumptive pollution and adding safeguards that enhance stream protections. We also note that the Pennsylvania program and Federal regulations include numerous enforcement mechanisms, including penalties and cessation orders, as discussed in the response to comment 3.

Comment 20: Commenter raised concerns that approving the amendment would violate unspecified provisions of Subchapter J, 30 CFR part 800 (Bond and Insurance Requirements), by removing "any assignment or determination of liability" and thereby negating any need for performance bonds.

OSMRE Response: We believe the commenter is incorrect in suggesting that Act 32 somehow negates the need for performance bonds. Pennsylvania's bonding requirements in Subchapter F of Chapter 86, Title 25, will still apply following approval. Act 32 neither addresses bonding and nor amends Pennsylvania's approved bonding scheme.

Comment 21: Commenter alleged that 30 C.F.R. 732.15(c) prohibits state program provisions that interfere with or preclude implementation of SMCRA.

OSMRE Response: Although the commenter failed to provide a reason explaining how Act 32 purportedly interferes with or precludes implementation of

SMCRA, we have reviewed Act 32 and compared it to SMCRA and the Federal regulations and disagree with the commenter's allegation. As discussed in the Findings section and in the response to comment 4, OSMRE must assure that a proposed amendment is in accordance with SMCRA and consistent with the Federal regulations. In the case of Act 32, after our review, we conclude that it meets that standard.

Comment 22: Commenter claimed that the amendment violates section 303 of the Clean Water Act and EPA's antidegradation regulations, which mandate that when the regulatory authority approves coal mining permits or approvals, it must ensure that the existing and designated uses of surface waters are maintained and protected.

OSMRE Response: Section 303 of the Clean Water Act sets forth an "anti-degradation policy," which requires that state standards be sufficient to maintain existing beneficial uses of navigable waters, preventing their further degradation. *See* 33 U.S.C. 1313(d)(4)(B). Pennsylvania's Clean Water Act program has met these requirements, and SMCRA provides that nothing in it can "be construed as superseding, amending, modifying or repealing" the Clean Water Act. *See* 30 U.S.C. 1292(a)(3). Act 32 does not change the fact that Pennsylvania must comply with the remainder of its SMCRA regulatory program and with all applicable portions of the Clean Water Act, including the anti-degradation policy. Rather, Act 32 leaves the rest of the current Pennsylvania SMCRA regulatory program as well as the Clean Water Act requirements intact. Act 32 simply codifies PADEP's long-standing regulatory interpretation of what constitutes evidence of presumptive pollution and adds safeguards that enhance stream protections. Moreover, as noted above we sought comments from EPA, which regulates the Clean Water Act, but EPA did not provide any comments.

Comment 23: Commenter suggested that the amendment will lead to the wholesale destruction of streams in coalfields where longwall mining occurs. According

to the commenter, mine operators will no longer need to make even a pretense of trying to avoid or minimize damage to streams.

OSMRE Response: As stated above, we conclude that Act 32 enhances and clarifies the existing Pennsylvania regulatory program. Section 516(b)(9) of SMCRA directs that permits require operators to minimize disturbances to the “prevailing hydrologic balance” and to the “quantity of water in surface ground water systems both during and after coal mining operations and during reclamation.” *See* 30 U.S.C. 1266(b)(9). Pennsylvania’s approach is more rigorous than that standard. As discussed in response to comment 2, Act 32 operates in conjunction with the existing regulatory scheme and expressly requires that permit applications “provide for” restoration of premining range of flows and restoration of premining biological communities. There is no comparable requirement in SMCRA that requires those restoration metrics. Act 32 imposes on operators the additional duty of demonstrating the absence of “presumptive evidence of potential pollution,” something also not required by SMCRA or its implementing regulations. Given the protections in the Pennsylvania program, which is in accordance with SMCRA and consistent with the Federal regulations, we disagree with this commenter’s allegations.

Comment 24: Commenter asserted that changes in baseflow of a stream can have “marked effects on the integrity of macroinvertebrate communities in stream ecosystems.”

OSMRE Response: We agree that changes in baseflow can affect stream biology, but that fact does not support disapproval of this amendment. Planned subsidence is permissible under SMCRA and the approved Pennsylvania program. Act 32 clarifies the Pennsylvania program in regard to presumptive evidence of pollution and enhances the permitting process by adding greater stream protections, including the

restoration of premining biological communities, as discussed in the response to comments 2 and 23.

Comment 25: Commenter requested that the scope of “biological communities” be more clearly defined and include invertebrate, algal, and piscivorous species, among others.

OSMRE Response: While we understand the commenter’s request, the fact that Pennsylvania could have more clearly defined “biological communities” does not make the amendment not in accordance with SMCRA or inconsistent with the Federal regulations. If Pennsylvania later determines that additional clarification of that term is necessary, Pennsylvania could always propose another amendment to their program to further define this term.

Comment 26: Commenter stated that the proposed changes do not facilitate the goals of the Clean Streams Law because altered streamflow regimes can adversely impact health of ecosystems, which will not lead to their net improvement.

OSMRE Response: We agree that altered streamflow can adversely impact stream ecosystems, but we note that “net improvement” is not a requirement under the Clean Streams Law or SMCRA. Instead, the SMCRA standard for approving a program amendment requires us to determine whether the amendment is in accordance with SMCRA and consistent with the Federal regulations as those terms are defined in 30 CFR 730.5. The applicable Federal regulation is 30 CFR 817.41(a), which requires that mining activities be conducted “to minimize disturbance of the hydrologic balance” and to “prevent material damage to the hydrologic balance outside the permit area.” SMCRA’s standards do not require “net improvement.” As discussed in the response to comment 3, some amount of damage is permissible so long as it does not rise above the acceptable level of damage. If it does, remedies and enforcement mechanisms for addressing damage exist under the Pennsylvania program and Federal regulations.

Comment 27: Commenter raised concerns that Act 32 seeks to weaken the protections afforded to streams and allows the destruction of public natural resources for private profit.

OSMRE Response: We disagree and believe that Act 32 enhances the Pennsylvania program, as discussed in the responses in comments 2 and 23.

Comment 28: Commenter asserted that Act 32 “contradicts the minimum statutory floors” in Part 817 of SMCRA, referring specifically to 30 CFR 817.41(a), and contended that Act 32 violates the requirement that mining activities be conducted “to minimize disturbance of the hydrologic balance” and to “prevent material damage to the hydrologic balance outside the permit area.”

OSMRE Response: As noted in our response to comment 26, we do not agree that Act 32 violates or contradicts 30 CFR 817.41(a). The current Pennsylvania program meets the standard of section 817.41, and, as explained further in the responses to comments 2 and 23, the addition of Act 32 serves to clarify and enhance the existing program.

Comment 29: Commenter stated that Act 32 uses “dangerously vague language,” by not defining “permanent,” as used in sec. 5(i), which provides that applications for planned subsidence cannot be approved if they predict “permanent disruption of premining existing or designated uses of surface waters”

OSMRE Response: Courts read terms in a statute or regulation that are not defined according to their plain meaning, a rule we observe in this instance. The absence of a definition for “permanent” in Act 32 does not demand disapproval of the amendment.

Comment 30: Commenter stated that healthy ephemeral streams could be predicted to change to intermittent streams which “would then essentially be gone” and

their “aquatic life largely wiped out for [up to decades] before any restoration to premining flow occurs.”

OSMRE Response: While we recognize this possibility exists, we note that the approved Pennsylvania program includes numerous regulatory requirements serving as safeguards to assist in avoiding such outcomes, as discussed in the response to comment 6. As discussed in the response to comments 2 and 23, Act 32, with the new requirements related to restoration of premining range of flows and biological communities should actually enhance stream protections over the minimum standards contained in SMCRA and makes the outcomes described by the commenter less likely. Under the approved Pennsylvania program, technical staff at PADEP will apply their expertise to the applications and supporting data to make predictive judgments in approving planned subsidence. Act 32 does not change this requirement, except to the extent it enhances stream protection, as discussed throughout these comment responses.

Comment 31: Commenter states successful restoration is “extraordinarily difficult” to predict and argues Act 32 should not be approved because it “banks heavily on the viability of successful stream restoration techniques,” adding that “banking on modern day methodology to prevent future harms can and does fail.”

OSMRE Response: We refer the commenter to the responses to comments 16 and 23.

Comment 32: Commenter suggested that Act 32 was intended to “affirm the PADEP interpretation of the Clean Streams Law allowing temporary material damage to water resources from ‘planned subsidence’ provided that a plan was submitted to restore the damaged resource.” Commenter also stated that Act 32 seeks to “legislatively resolve the question left open in” *UMCO Energy v. Department of Environmental Protection*, 938 A.2d 530 (2007).

OSMRE Response: We refer commenters to the response to comment 5, including the statement that it is the duty of PADEP and OSMRE to faithfully execute the law and that OSMRE has no reason or authority to question the legislature's motives. It is our duty is to assess the proposed amendment under the SMCRA standard discussed in the response to comment 3.

Comment 33: Commenter stated that Act 32 “eliminates the presumption that planned subsidence . . . has the potential to cause pollution, provided that the permit application contains a plan to restore [premining flows and biological communities].”

OSMRE Response: This comment mischaracterizes the effect of section 5(j) of Act 32. Even prior to the enactment of Act 32, under the approved Pennsylvania program, there was no blanket presumption that planned subsidence has the potential to cause pollution; thus, the enactment of Act 32 could not cause such presumption to be eliminated. We recognize, however, that Act 32 does add language to section 5 of the Bituminous Mine Subsidence and Land Conversation Act, which specifies that planned subsidence meeting regulatory requirements is not a circumstance where a finding of presumptive evidence of potential pollution under the Clean Streams Law is warranted.

Comment 34: Commenter alleged that Act 32 ignores “temporal losses” of a stream’s “function, use, and values” and “sanctions temporary impacts on [water resources] in a fashion repugnant to SMCRA.”

OSMRE Response: Nothing in SMCRA would prohibit temporal losses; SMCRA requires restoration after subsidence, which necessarily means that temporal losses are expected under SMCRA between the time of impact and restoration. As discussed in the response to comment 3, some degree of disturbance is allowable under SMCRA; Act 32 does not go beyond what is allowable.

Comment 35: Commenter stated that Act 32 is arbitrary, capricious, and inconsistent with law as a matter of law and as a matter of fact and because it excludes temporary damage from “pollution.”

OSMRE Response: We disagree. As stated in responses other comments and our findings, the amendments made to the Pennsylvania program by Act 32 are in accordance with SMCRA and consistent with the Federal regulations.

Comment 36: Commenter extensively summarized the law (including prior OSMRE rulemakings on protection of the hydrologic balance and prevention of material damage) and asserts that the Pennsylvania legislature “cannot linguistically redefine ‘pollution’ in a manner that effectively redefines ‘material damage’ . . . to mean only permanent or irreparable material damage.”

OSMRE Response: As stated elsewhere in this preamble, we do not believe Act 32 lowers the standard of “material damage” below the standard set forth in SMCRA. As stated in the response to comment 2, even before the enactment of Act 32, planned subsidence was permissible under the Pennsylvania program and PADEP’s long-standing practice. This practice was supported by PADEP’s view that planned subsidence, in and of itself, does not constitute presumptive evidence of pollution under the Clean Streams Law. While we recognize that some commenters may have a different interpretation, Act 32 codifies the interpretation that had previously been used by PADEP, which clarifies the operative standard for operators, regulators, and the public.

Comment 37: Commenter contended that neither the factual record nor the law supports approval of a state program amendment allowing PADEP the authority to approve planned subsidence “without an affirmative demonstration by the permit applicant and a finding by the agency” that the operation is designed to “prevent material damage to the hydrologic balance outside the permit area’ inclusive of both permanent

and temporary interference with the designated and actual uses of the waterbody due to subsidence.”

OSMRE Response: Act 32 did not change the requirement of the approved Pennsylvania program at 25 Pa. Code § 86.37(a) that mandates that an application cannot be approved unless the application “affirmatively demonstrates and [PADEP] finds, in writing, on the basis of the information in the application or from information otherwise available,” that the “activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.” In addition, under section 5(j) of Act 32, operators are required to make an affirmative demonstration sufficient for PADEP to conclude that the application adequately “provide[s] for” restoration of premining flows and premining biological communities. Thus, PADEP still must make the findings required by SMCRA related to material damage caused by underground mining.

Comment 38: Commenter raised concerns that the amendment creates an exemption to an 80-year-old law that protects streams and water supplies and will allow mining companies to predictably damage or pollute streams based on a promise to clean them up later.

OSMRE Response: We disagree with the commenter’s characterization of the amendment. As explained in the response to comment 7, Act 32 codifies PADEP’s prior interpretation of what constitutes evidence of presumptive pollution and adds requirements that strengthen stream protection. To describe Act 32 as creating an exemption to Pennsylvania’s Clean Streams Law would ignore PADEP’s long-standing practice and regulatory interpretation that law’s application to underground mining with planned subsidence.

Comment 39: Commenter noted that PADEP identified six streams in December 2012 as having been irreparably damaged after being dewatered, and, restoration of those streams were unsuccessful after five years.

OSMRE Response: While stream damage, such as the commenter has described, has occurred in the past, neither that fact nor the fact that PADEP has overseen many successful restorations is the standard by which we evaluate a proposed state program amendment. The Pennsylvania program, as amended by Act 32 and in accordance with SMCRA and consistent with the Federal regulations, does not require perfect restoration. Some amount of damage is permissible under these authorities, provided it does not rise to the level of material damage. If it does rise to the level of material damage, in accordance with SMCRA and consistent with the Federal regulations, the Pennsylvania program contains remedies and enforcement mechanisms to allow PADEP to address such a violation.

Comment 40: Commenter requested an extension of the comment period, because of the “horrendous damage this change would allow to Pennsylvania streams.”

OSMRE Response: As indicated in section II, OSMRE extended the comment period April 11, 2018, to June 15, 2018. We disagree with commenter’s allegation regarding the consequences of this amendment. As discussed in the Findings and in responses to comments 2 and 3, by imposing on operators a duty of affirmatively demonstrating the absence of any “presumptive evidence of potential pollution,” even while excepting planned subsidence from the demonstration, the proposed amendment promotes the core objective of subsection 516(b)(9) of SMCRA.

Comment 41: Commenter claimed that changes in baseflow can have “marked effects on the integrity of macroinvertebrate communities in stream ecosystems.”

OSMRE Response: We agree that changes in baseflow can affect stream biology, but this fact is not a reason for disapproval. Planned subsidence is permissible

under SMCRA and the approved State program. Act 32 clarifies the Pennsylvania program with regard to presumptive evidence of pollution and enhances the permitting process by adding greater stream protections, as discussed in the response to comments 2, and 23

Comment 42: Commenter stated that the scope of “biological communities” should be more clearly defined and should include invertebrate, algal, and piscivorous species, among others.

OSMRE Response: While we understand why the commenter suggested that a definition of “biological communities” be included, such a definition is not necessary for us to consider and approve this amendment. As written the proposed amendment is in accordance with SMCRA and consistent with the Federal regulations, as discussed in the response to comments 2 and 23.

At a public hearing in Green Tree, PA, OSMRE heard from three individuals opposed to the amendment. The comments in opposition to the proposed amendment raised concerns similar to those set out above and are addressed by these responses. At the same public hearing, OSMRE heard statements from four individuals in favor of the proposed amendment, who indicated, among other things, that Act 32 reaffirms the permitting protocols already employed under the Pennsylvania program and does not lessen existing standards; long wall mining is consistent with section 516 of SMCRA, which has been construed as allowing use of longwall mining methods; and some amount of stream damage is permissible so long as it does not rise to the level of material damage. We generally agree with these statements, and we appreciate all parties’ participation in the process.

Federal Agency Comments

On February 21, 2019, pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253(b)), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA-899). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.).

None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 7, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. PA-899.00). The EPA responded (Administrative Records No. PA-899.003) via letter dated October 31, 2017, that they have reviewed the proposed amendment and would not be providing comments.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 7, 2017, we requested comments on the amendment (Administrative Record No. PA-899). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are approving the Pennsylvania amendment that was submitted on August 4, 2017 (Administrative Record No. PA-899.00). To implement this decision, we are amending the Federal regulations at 30 CFR part 938 that codify decisions concerning the Pennsylvania program. In accordance with the

Administrative Procedure Act (5 U.S.C. 553), this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference with Constitutionality Protected Property Rights

This rule would not affect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review,

Executive Order 12866, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M-94-3), the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department has determined that this *Federal Register* document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of

this *Federal Register* document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the program amendment that the Commonwealth of Pennsylvania drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. Pennsylvania, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Pennsylvania program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination with Indian Tribal Government

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to Tribal self-governance and sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal government and Tribes.

The basis for this determination is that our decision on the Pennsylvania program does not include Indian lands as defined by SMCRA or other Tribal lands, and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department’s consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate

Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking 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 significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared, and certification made that

such regulations would not have a significant economic effect upon a substantial number of small entities. 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 corresponding 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Ben H. Owens,
Acting Regional Director

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.

2. Amend § 938.15 in the table by adding an entry in chronological order by “Date of Final Publication” for “August 4, 2017” to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment Submission date	Date of final Publication	Citation/description
* * * * * August 4, 2017	* * [Insert date of publication in the Federal Register]	Addition of subsections (i) and (j) to Section 5 of BMSLCA (52 P.S. § 1406.5(i) and (j)); amendment of Section 9a(d) of BMSLCA (52 P.S. § 1406.9a(d)).