

- Whether the adoption of the current versions would be controversial; and
- Whether the latest versions reduce risk more than the versions that are currently incorporated in OSHA standards.

Various SDOs and other organizations responded and indicated their desire to assist OSHA in its effort to update its standards. Among the SDOs providing input were ANSI, the National Fire Protection Association (NFPA), the American Society of Mechanical Engineers (ASME), and the American Society for Testing and Materials. Other organizations such as Underwriters Laboratories, the American Petroleum Institute, the Compressed Gas Association, and the Abrasive Wheel Institute also responded. Many of the SDOs and other organizations provided OSHA with copies of the most recent versions of their referenced standard(s) and offered to provide technical assistance to the Agency in its analysis of the older and new standards. OSHA appreciates the willingness of these organizations to help us implement this project.

Nearly all of the SDOs said that OSHA's standards needed updating to reflect current versions of the consensus standards and that the current versions provided a higher level of safety to workers. In addition, many of the SDOs believe that OSHA's efforts to update its standards to reflect current versions of the consensus standards will not elicit controversy. For example, the ASME said:

[We] believe that adoption of the current version of each of these standards by the Federal Government with the changes identified would be non-controversial. Similarly, it is our opinion that the current versions of ASME standards will provide a reduction in the risk of accidents and injuries as compared to earlier versions presently referenced in the CFR and will alleviate some of the confusion in the regulated industry. Moreover, in addition to the technological advances incorporated into updated standards, many of the products described in the older versions of standards are no longer available, or are very difficult to obtain. Ex. 2-2, p. 2.

The NFPA noted that each of their documents has been updated "to reflect up-to-date terminology and current industry practices." Ex. 2-3, App. B. The updated documents often cover technology that has been developed since the OSHA standard was promulgated. "Providing a state-of-the-art document reflecting business practices of today promotes more of an understanding, appreciation and the much-necessary buy-in by the users of the regulations, thereby reducing risk." Ex. 2-3, App. B.

The NFPA also thought the updated references "would be largely non-controversial since the documents are ANSI consensus standards." Ex. 2-3, App. B. In addition, the NFPA said that "[w]ith the interested parties participating in the process to write documents, and with the respective affected industries and their insurance companies currently using NFPA documents, there is little controversy with OSHA referencing the most updated NFPA codes and standards." Ex. 2-3, App. B. The NFPA also said that for those OSHA standards that contain word-for-word text from NFPA codes and standards, OSHA should consider replacing the text "with a simple reference to the applicable primary NFPA document." Ex. 2-3, App. B.

OSHA is undertaking a series of regulatory projects to update its standards to reflect the current versions of consensus standards. These regulatory projects will include updating or revoking outdated consensus standards incorporated by reference, and updating regulatory text of current OSHA rules that were adopted directly from the language of outdated consensus standards. OSHA will use a variety of regulatory approaches in this effort, including:

1. *Notice and comment rulemaking.* OSHA intends to initiate formal (notice and comment) rulemaking to update or revoke references to outdated consensus standards in instances where OSHA anticipates that the action would either impose compliance costs or raise significant issues. OSHA will also use traditional notice and comment rulemaking to update OSHA provisions that were derived directly from the text of outdated consensus standards. OSHA is already using this technique to update its electrical installation standards in Subpart S of Part 1910 (proposed rule published April 5, 2004, 69 FR 17774) and expects to publish a proposed rule in the near future for Subpart V (power transmission and distribution lines and equipment) of Part 1926.

2. *Direct final rulemaking.* OSHA will use direct final rulemaking to update or revoke, as appropriate, references to outdated consensus standards where the regulatory change is non-controversial, equally protective, and does not impose significant new compliance costs.

3. *Technical amendments.* Where appropriate, OSHA intends to issue technical amendments to update references that are currently incorporated into OSHA standards and that only provide information to the regulated community. Such references impose no compliance obligations and

can be updated without notice and comment procedures.

OSHA welcomes comments on this update effort generally, as well as specific suggestions on which projects OSHA should pursue first.

#### Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5-2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 17 day of November 2004.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 04-26047 Filed 11-23-04; 8:45 am]

BILLING CODE 4510-26-P

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-124-FOR]

#### Pennsylvania Regulatory Program

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We are reopening the public comment period on a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Since the close of the comment period, Pennsylvania has provided explanatory information in response to two letters, as amended, we sent requesting clarification with regard to its proposed amendment. Pennsylvania has also withdrawn portions of its original amendment and has requested that we consider some existing statutes and regulatory provisions as part of the amendment. Pennsylvania has also indicated its intent to further revise portions of the amendment. We are accepting comments on the specific changes noted below only.

**DATES:** We will accept written comments on this proposal until 4 p.m., (local time) December 9, 2004.

**ADDRESSES:** You may submit comments, identified by PA-124-FOR, by any of the following methods:

- E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov). Include PA-124-FOR in the subject line of the message.

- Mail/Hand Delivery: George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the Pennsylvania program, this amendment, and all written comments received in response to this document at the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division.

George Rieger, Director, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov), Telephone: (717) 782-4036.

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 Proposed Action
- III. Public Comment Procedures

**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 the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval 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 Proposed Action**

By letter dated December 18, 1998 (Administrative Record No. PA 853.01), the Pennsylvania Department of Environmental Protection (PADEP) submitted a proposed amendment to its program pursuant to various issues including bonding, re-mining and reclamation, postmining discharges, and water supply protection/replacement. The proposal included two documents: "Provisions of Pennsylvania's Statute—Surface Mining Conservation and Reclamation Act—Submitted for Program Amendment" and "Provisions of Pennsylvania's Regulations—25 Pa. Code Chapters 86-90—Submitted for Program Amendment."

We announced receipt of the proposed amendment in the March 12, 1999, **Federal Register** (64 FR 12269), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 12, 1999. Please refer to the March 12, 1999, **Federal Register** for additional background information. In the July 8, 1999, **Federal Register** (64 FR 36828), we reopened the comment period in response to a June 1, 1999, letter (Administrative Record No. PA 853.11) from PADEP regarding deletion of the definition of the term "best professional judgment" at 25 Pa. Code 87.202 and 25 Pa. Code 88.502, and the deletion of subsections 25 Pa. Code 87.207(b) and 25 Pa. Code 88.507(b). The reopened comment period closed on July 23, 1999.

By letters dated September 22, 1999 (Administrative Record No. PA 853.14), and April 6, 2000 (Administrative Record No. PA 853.17), we requested clarification from Pennsylvania on various aspects of its amendment. In an

October 3, 2002, letter to Pennsylvania (Administrative Record No. PA 853.22), we indicated that some of the issues in our September 22, 1999, and April 6, 2000, letters were no longer valid and that we were withdrawing our request for clarification of those issues. The conclusions in this letter were the result of our internal deliberations; we did not remove our request for clarification of these issues as the result of information from any other source. Since the issuance of the October 3, 2002, letter, we have had numerous meetings with Pennsylvania to discuss the items remaining from the September 22, 1999, and the April 6, 2000, letters.

The meetings with Pennsylvania resulted in Pennsylvania providing information to us to clarify the meaning of various parts of its amendment. We prepared a document listing those clarifications and placed it in the administrative record (Administrative Record No. PA 853.25). Copies of that document can be obtained from OSM's Harrisburg Office at the address noted above. The parts of Pennsylvania Surface Mining Conservation and Reclamation Act (PASMCR) that we received clarifications on include: Sections 4(d); 4(d)(2); 4(g)(1) and (3); 4.2(f)(2) and (3); 4.13; 18(a.1); and 18.9. We received clarifications from Pennsylvania on the following regulations at 25 Pa. Code Chapter 86: Sections 86.151(c); 86.158(e) and (f); 86.168; 86.174(a); 86.252 (definition of "re-mining area"); 86.253(b)(2)-(4); and 86.354. Finally, we received clarifications from Pennsylvania on the following portions of 25 Pa. Code Chapter 87: 87.119(d) and (e). We are seeking comment on the clarifications PADEP provided to us of these sections.

Additionally, Pennsylvania submitted two letters to us modifying the December 18, 1998, amendment. Those letters were dated December 23, 2003 (Administrative Record No. PA 853.23), and April 13, 2004 (Administrative Record No. PA 853.24).

In the December 23, 2003, letter, Pennsylvania noted that in the 1998 amendment submission it had proposed the removal of certain language in 25 Pa. Code Chapters 87-90 including: Sections 87.102; 87.103; 87.207(b); 88.92; 88.93; 88.187; 88.188; 88.292; 88.293; 88.507(b); 89.52; 89.53; 90.102; and 90.103 which provide effluent limits for discharges from areas disturbed by coal mining activities. In the 1998 amendment, Pennsylvania also requested the definition of the phrase, "dry weather flow" in 25 Pa. Code 87.1, 88.1, 89.5, and 90.1 and the definition of the phrase, "best professional judgment" in Sections 87.202 and

88.502 be removed from the approved program. In the December 23, 2003, letter, Pennsylvania revised the 1998 amendment as submitted to retain, as part of its approved program, the above referenced regulations which provide effluent limits and the definitions of "dry weather flow" and "best professional judgment." Therefore, we consider those portions of the 1998 amendment submission as withdrawn and they will not be considered further in this rulemaking. No comments will be accepted with regard to these areas.

Also in the December 23, 2003, letter Pennsylvania indicated that the 1998 program amendment had included Sections 4(g.1), 4(g.2), and 4(g.3) of PASMCRRA relating to minimal impact postmining discharges and the release of bonds on mine sites with discharges. Pennsylvania noted in that letter that since the definition of minimal impact postmining discharges and the regulations for postmining discharges were not included in the program amendment, it was requesting that these sections of PASMCRRA be removed from the proposed amendment. Pennsylvania noted in the letter that it was intending to submit these sections along with the associated regulations as a separate program amendment. Therefore, these sections are also withdrawn and will not be considered further in this rulemaking. No comments will be accepted with regard to these areas.

In the April 13, 2004, letter, Pennsylvania notified us that it wished to withdraw Section 18(a.4) of PASMCRRA from consideration under the 1998 program amendment because the areas suitable for reclamation by re-mining program has not yet been developed. Therefore, this section will not be considered further in this rulemaking. No comments will be accepted with regard to these areas.

Also in its April 13, 2004, letter Pennsylvania requested that we consider for approval Sections 4.10 and 4.11 of PASMCRRA and the corresponding regulations at 25 Pa. Code Sections 86.251 through 86.270. These sections of the statute and regulations provide for Pennsylvania's Remining Operators Assistance Program. This program provides incentives to operators to undertake reclamation and re-mining of abandoned mine lands and bond forfeiture sites. These provisions are now included in this rulemaking action and we are seeking comment with regard to these sections of PASMCRRA and 25 Pa. Code Chapter 86.

In the April 13, 2004, letter, and its attachment, Pennsylvania also notified us that it intends to address outstanding

issues in this amendment relating to: *De minimis* cost increases for a replacement water supply; temporary replacement of water supply; waivers for water supply replacement; adequate versus equivalent water supply; operation and maintenance costs for replaced water supplies; financial guarantees to operators to reclaim abandoned mine lands through re-mining; and, operator cost recovery, through additional regulation changes. While Pennsylvania has indicated that it intends to further revise those portions of the pending package, it has not withdrawn those portions and has asked that we proceed with a decision. Since we received no changes or clarifications from the original amendment with regard to these areas, we are not reopening the comment period for them.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the information described above satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### Written Comments

Send your written or electronic 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. We will not necessarily consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Office may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA-124-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 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.

### List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 2004.

#### Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2004-0142; FRL-7686-4]

#### Trifluralin; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** This document proposes to establish a tolerance for residues of trifluralin in mint oil under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The amendment substantially rewrote section 408 of FFDCA. As a result, the revisions made it necessary, once again, to establish tolerances on certain commodities, such as mint oils, that had previously been deemed unnecessary.

**DATES:** Comments must be received on or before January 24, 2005.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number OPP-2004-0142, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Agency Website:* <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov),