

8. In paragraph (a) of § 305.20, add the phrase “metal halide lamp fixtures,” after the phrase “fluorescent lamp ballasts,” and add paragraph (e) to read as follows:

**§ 305.20 Paper catalogs and Web sites.**

\* \* \* \* \*

(e) Any manufacturer, distributor, retailer, or private labeler who advertises metal halide lamp fixtures manufactured on or after January 1, 2009 in a catalog, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such metal halide lamp fixture, a capital letter “E” printed within a circle.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-150-FOR; OSM-2008-0002]

#### Pennsylvania Regulatory Program

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

**ACTION:** Proposed rule; removal of required amendment.

**SUMMARY:** We are announcing receipt of a request to remove a required amendment to the Pennsylvania regulatory program (the “Pennsylvania program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In response to a required program amendment codified in the Federal regulations at 30 CFR 938.16(uuu), Pennsylvania has submitted rationale that it believes supports its position that current program provisions are sufficient to render its program no less effective than the Federal requirements and, therefore, no amendment is necessary. The required amendment pertains to regulatory exemptions for coal extraction incidental to the extraction of other minerals.

This document gives the times and locations that the Pennsylvania program and this request are available for your inspection, the comment period during which you may submit written comments, and the procedures that we

will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., local time May 1, 2008. If requested, we will hold a public hearing on April 28, 2008. We will accept requests to speak at a hearing until 4 p.m., local time on April 16, 2008.

**ADDRESSES:** You may submit comments by either of the following two methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID: OSM-2008-0002. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and do the following. Click on the “Advanced Docket Search” button on the right side of the screen. Type in the Docket ID OSM-2008-0002 and click the “Submit” button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM-2008-0002, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

*Mail/Hand Delivery/Courier:* Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101.

*Instructions:* 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:* In addition to obtaining copies of documents at <http://www.regulations.gov>, information may also be obtained at the addresses 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.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101, (717) 782-4036. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5015. E-mail: [jpizarchik@state.pa.us](mailto:jpizarchik@state.pa.us).

**FOR FURTHER INFORMATION CONTACT:** Mr. 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. Description of the Request
- III. Public Comment Procedures
- IV. Procedural Determinations

#### **I. Background on the Pennsylvania Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act. \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

#### **II. Description of the Request**

By letter dated December 18, 2007 (Administrative Record Number PA 892.00), Pennsylvania sent us a response to a program amendment that was required by OSMRE in a final rule notice published in the **Federal Register** on November 7, 1997 (62 FR 60177) and codified in the Federal Regulations at 30 CFR 938.16(uuu). Pennsylvania states that it believes that current Pennsylvania program regulations are sufficient to render its program no less effective than the Federal requirements at 30 CFR 702.17(c)(2) and (c)(3), Exemption for Coal Extraction Incidental to the Extraction of Other Minerals and, therefore, a program amendment is not necessary.

This required amendment provided that Pennsylvania submit an amendment to provide counterparts to the Federal regulations at 30 CFR 702.15(d), (e), (f), and 702.17(c)(2), and (c)(3). The Federal regulations pertain to (1) conditions of exemption and right of inspection and entry; and (2) revocation and enforcement. Pennsylvania submits that its regulatory program already

contains counterparts to the Federal regulations and, therefore, is as effective as the Federal regulations pertaining to incidental coal extraction. Pennsylvania requests that we remove the condition found at 30 CFR 938.16(uuu) on this basis.

In summary, the Federal regulations and PADEP rationale are provided as follows:

*Federal Regulations: 30 CFR 702.15, Conditions of exemption and Right of Inspection and Entry*, provides the following with regard to exemptions for coal extraction incidental to the extraction of other minerals:

(d) Authorized representatives of the regulatory authority and the Secretary shall have the right to conduct inspections of operations claiming exemption under this part.

(e) Each authorized representative of the regulatory authority and the Secretary conducting an inspection under this part:

(1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

(f) No search warrant shall be required with respect to any activity under paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

*PADEP Response:* OSM's review of 25 Pennsylvania Code (Pa Code) Section 86.5 in the 1997 rulemaking did not include a discussion of the need for 25 Pa Code Section 86.5 to be revised to add counterparts to the Federal regulations at 30 CFR 702.15(d), (e), and (f). Thus, it is not clear why OSM considered 25 Pa Code Section 86.5 to be less effective than the Federal regulations with respect to the right to conduct inspections and right of entry for operations extracting coal incidental to surface mining.

Pennsylvania's non-coal mining regulations in 25 Pa Code Chapter 77, (which persons claiming exemption under 25 Pa Code Section 86.5 are subject to pursuant to 25 Pa Code Section 86.5(a)), provide counterparts to the Federal regulations at 30 CFR 702.15(d), (e), and (f). Furthermore, it provides broader authority to Pennsylvania's authorized representatives given that they may enter a building at a surface mine site

for purposes of inspection or investigation without being required to obtain a search warrant.

*Federal Regulations: 30 CFR 702.17(c)(2) and (c)(3), Revocation and Enforcement*, provides that:

(c)(1) If the regulatory authority finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the regulatory authority shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the regulatory authority shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding state procedures when a State is the regulatory authority.

(3) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a decision whether to revoke an exemption.

*PADEP's Response:* OSM's required amendment at 30 CFR 938.16(uuu) with respect to Pennsylvania counterparts for 30 CFR 702.17(c)(2) and (c)(3) also was not discussed in the 1997 rulemaking. More importantly, this part of the required amendment actually conflicts with OSM's own findings in the 1997 rulemaking.

In the 1997 rulemaking, OSM determined that 25 Pa Code Section 86.5(o) is identical in meaning to 30 CFR 702.17(c)(2); 25 Pa Code Section 86.5(o) is identical in meaning to 30 CFR 702.17(c)(2); and that 25 Pa Code Section 86.5(n) is identical in meaning to 30 CFR 702.17(c)(3). See **Federal Register** (62 FR 60169–70 and Table A). OSM then concluded: "Because the above proposed revisions (listed in Table A) are identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal rules." Thus, the portion of 30 CFR 938.16(uuu) pertaining to counterparts to 30 CFR 702.17(c)(2) and (c)(3) appears to be an error.

In any event, Pennsylvania submits that statutory and regulation sections regarding the right of appeal to the Pennsylvania Environmental Hearing Board provide counterparts to 30 CFR 702.17(c)(2) and (c)(3). These sections are the Environmental Hearing Board (EHB) Act at 35 Pennsylvania Statute 7511–7516; 25 Pa Code Chapter 1021

(EHB procedural rules); 25 Pa Code Section 1021.2 (defining "action" of the department), and Section 1021.51 (commencement of an appeal). Therefore, Pennsylvania submits that its regulatory program already contains counterparts to the Federal regulations at 30 CFR 702.17(c)(2) and (c)(3), which are as effective as the Federal regulations.

### III. Public Comment Procedures

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

#### *Written Comments*

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not 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 Pittsburgh Field Division identified above may not be logged in.

#### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time on April 16, 2008. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public

hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

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

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

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

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

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

##### *Executive Order 12988—Civil Justice Reform*

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

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

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

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian 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 major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (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 has determined 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.*). In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the analysis for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

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

##### *Unfunded Mandates*

This rule will not impose 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: February 29, 2008.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

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