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 the Pennsylvania program does not regulate surface coal mining and reclamation operations on Indian lands. Therefore, changes to the Pennsylvania program have no effect on federally-recognized Indian tribes.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental 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 upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–23986 Filed 9–18–03; 12:01 pm]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–141–FOR]

Pennsylvania Regulatory Program

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

ACTION: Proposed rule; public comment period and notice of public hearing on a proposed action.

SUMMARY: We are proposing to supersede portions of Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) because they are inconsistent with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In this proposed rule, we are asking for comments regarding the proposed supersession. In a separate proposed rulemaking also published today, we are asking for comments on changes Pennsylvania is proposing to make to its regulations related to the implementation of BMSLCA as well as clarifications to those regulations. We will be holding public hearings on both the proposal for superseding certain provisions of BMSLCA, as noted below, and Pennsylvania's proposed changes to its regulations on the dates indicated under **DATES**. Pennsylvania will also be holding public hearings on its proposed changes to its regulations. In order to accommodate those who wish to speak at both Pennsylvania's and our public hearings, the hearings will be held on the same days and at the same locations, but at different times.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on this proposed action, and the procedures that we will follow for the public hearings.

DATES: We will accept written comments on this proposal until 4 p.m., e.s.t., October 22, 2003. We will hold public hearings on the proposal on October 15, 2003, at the Best Western University Inn in Indiana, Pennsylvania,

at 3 p.m. and at 7 p.m. and on October 16, 2003, at the Holiday Inn Meadow Lands in Washington, Pennsylvania, at 3 p.m. and at 7 p.m. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 7, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Field Office Director at the address listed below.

You may review copies of the Pennsylvania program, this proposal, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

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

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*.

SUPPLEMENTARY INFORMATION:

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 Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), we are proposing to supersede portions of the following sections of BMSLCA as detailed below: 5.1(b)(52 P.S. 1406.5a(b)), 5.2(g)(52 P.S. 1406.5b(g)), 5.2(h)(52 P.S. 1406.5b(h)), 5.4(a)(3)(52 P.S. 1406.5d(a)(3)), 5.4(c)(52 P.S. 1406.5d(c)), 5.5(b)(52 P.S. 1406.5e(b)).

Section 5.1(b). We are proposing to supersede section 5.1(b) to the extent it would apply to water supplies covered under section 720 of SMCRA. Section 5.1(b) provides that:

(b) A mine operator shall not be liable to restore or replace a water supply under the provisions of this section if a claim of contamination, diminution or interruption is made more than two years after the supply has been adversely affected.

Section 5.2(g). We are proposing to supersede section 5.2(g) of BMSLCA to the extent that it would remove an operator's liability to restore or replace a water supply covered under section 720 of SMCRA. Section 5.2(g) provides that:

(g) If an affected water supply is not restored or reestablished or a permanent alternate source is not provided within three years, the mine operator may be relieved of further responsibility by entering into a written agreement providing compensation acceptable to the landowner. If no agreement is reached, the mine operator, at the option of the landowner, shall:

(1) purchase the property for a sum equal to its fair market value immediately prior to the time the water supply was affected; or

(2) make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made; whereupon the mine operator shall be relieved of further obligation regarding contamination, diminution or interruption of an affected water supply under this act. Any measures taken under sections 5.1 and 5.3 and this section to relieve a mine operator of further obligation regarding contamination, diminution or interruption of an affected water supply shall not be deemed to bar a subsequent purchaser of the land on which the affected water supply was located or any water user on such land from invoking rights under this section for contamination, diminution or interruption of a water supply resulting from subsequent mining activity other than that contemplated by the mine plan in effect at the time the original supply was affected.

Section 5.2(h). We are proposing to supersede section 5.2(h) of BMSLCA to the extent it would bar Pennsylvania from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA. Section 5.2(h) provides that:

(h) Prior to entering into an agreement with the mine operator pursuant to subsection (g), the landowner may submit a written request to the department asking that the department review the operator's finding that an affected water supply cannot reasonably be restored or that a permanent alternate source, as described in subsection (i), cannot reasonably be provided. The department shall provide its opinion to the landowner within sixty days of receiving the landowner's request. The department's opinion shall be advisory only, including for purposes of assisting the landowner in selecting the optional compensation authorized under subsection (g). The department's opinion shall not prevent the landowner from entering into an agreement with the mine operator pursuant to subsection (g), and such opinion shall not serve as the basis for any action by the department against the mine operator or create any cause of action in a third party, provided the operator otherwise complies with subsection (g).

Section 5.4(a)(3). We are proposing to supersede the portion of section 5.4(a)(3) of BMSLCA that states, ''in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application,'' to the extent it excludes structures covered under Section 720 of SMCRA from repair or compensation requirements. This provision is proposed to be superseded because it may exclude certain structures from the repair and compensation provisions of SMCRA.

Section 5.4(a)(3) provides that:

5.4. Restoration or compensation for structures damaged by underground mining.

(a) Whenever underground mining operations conducted under this act cause damage to any of the following surface buildings overlying or in the proximity of the mine:

* * * * *

(3) Dwellings used for human habitation and permanently affixed appurtenant structures or improvements in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application; or

* * * * *

Section 5.4(c). We are proposing to supersede section 5.4(c) of BMSLCA where it would relieve an operator's liability to repair or compensate for damage to a structure covered under

section 720 of SMCRA. Section 5.4(c) provides that:

(c) A mine operator shall not be liable to repair or compensate for subsidence damage if the mine operator, upon request, is denied access to the property upon which the building is located to conduct premining and postmining surveys of the building and surrounding property and thereafter serves notice upon the landowner by certified mail or personal service, which notice identifies the rights established by sections 5.5 and 5.6 and this section, the mine operator was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof.

Section 5.5(b). We are proposing to supersede the portion of section 5.5(b) of BMSLCA that reads, ''All claims under this subsection shall be filed within two years of the date damage to the building occurred'' where it would apply to a structure covered under section 720 of SMCRA. Section 5.5(b) provides that:

(b) If the parties are unable to agree within six months of the date of notice as to the cause of the damage or the reasonable cost of repair or compensation, the owner of the building may file a claim in writing with the Department of Environmental Resources, a copy of which shall be sent to the operator. All claims under this subsection shall be filed within two years of the date damage to the building occurred.

We are proposing to supersede the provisions of BMSLCA as noted above because we have previously determined that these provisions are inconsistent with SMCRA or the Federal regulations based on the reasons cited under ''Director's Findings'' in a notice of final rulemaking published in the **Federal Register** on December 27, 2001 (66 FR 67010) and because Pennsylvania did not propose revisions to the statute. This action is also needed to resolve litigation between Pennsylvania and OSM. In subsequent discussions with OSM, Pennsylvania expressed concern that without this action, there may be conflicts with new State rulemaking, which is needed to satisfy some of the required amendments of 30 CFR 938.16. Therefore, to alleviate Pennsylvania's concerns and as part of the measures to resolve the litigation, we are proposing to supersede those provisions as noted above.

Please note that we are proposing to supersede only the provisions of the BMSLCA to the extent noted above in this notice. The superseded provisions, as noted above, cannot be implemented or enforced by any party as they would apply to a water supply or structure covered by section 720 of SMCRA. However, this proposal will not change the way Pennsylvania or OSM enforce the provisions of BMSLCA or SMCRA in Pennsylvania unless or until it becomes final. To meet the enforcement requirements of section 720 in Pennsylvania, enforcement occurred through a combination of State enforcement of BMSLCA and direct Federal enforcement as described in the July 28, 1995, **Federal Register** (60 FR 38685). Pennsylvania's enforcement of BMSLCA and our direct enforcement continued from July 28, 1995, up to December 27, 2001, and continues as described in the December 27, 2001, final rule. A complete discussion of enforcement of the section 720 provisions of SMCRA in Pennsylvania and the relationship of the decisions made in the December 27, 2001, final rule to those enforcement provisions can be found in Section VI. Effect of Director's Decision in that final rule (66 FR 67061).

In a separate rulemaking located elsewhere in this **Federal Register** issue, Pennsylvania has submitted new regulations and supplemental information to OSM which will include enforcement of those areas of the program that have been superseded. We intend to coordinate the effective date of the final rule notice announcing the superseded provisions with Pennsylvania's rulemaking process regarding its new regulations to insure that there are no gaps in enforcement of Pennsylvania's program. The full text of the December 27, 2001, final rule is available for you to read at the locations listed above under **ADDRESSES.**

III. Public Comment Procedures

We are now soliciting comments on this proposal to supersede the portions of BMSLCA as noted above. If we receive no evidence demonstrating why these portions should not be superseded, we will publish a final notice to effect the supersession of the provisions by Federal law. This action, if taken, will require Pennsylvania to operate and enforce its approved program as if the superseded provisions did not exist.

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 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 Field 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–141–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 Field Office at (717) 782–4036.

Availability of Comments

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

Public Hearings

If you wish to speak at the public hearings, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 7, 2003. 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.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearings provide us with a written copy of his or her comments. The public hearings will continue on the specified dates 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 hearings after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. You do not need to attend both public hearings. We will consider all

comments received at either of the public hearings.

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 regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal 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

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on the analysis prepared for the OSM regulations implementing the provisions of the Energy Policy Act.

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 governmental 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 the analysis prepared for the OSM regulations implementing the provisions of the Energy Policy Act.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the analysis prepared for the OSM regulations implementing the provisions of the Energy Policy Act.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 2003.

Glenda Owens,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 03–23985 Filed 9–9–03; 8:45 am]

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