

Valuation of Oil Sold After Arm's-length Exchange Agreements or Sold by an Affiliate at Arm's Length

If the lessee sells its oil at arm's length after one or more arm's-length exchanges, we would allow the lessee the option of valuing its production on either the sale after the exchange(s) or index prices. For the Rocky Mountain Region, lessees would use a series of benchmarks instead of index prices if they choose not to trace the production to the arm's-length sale.

Similarly, if the lessee sells or transfers its oil to an affiliate that resells the oil under an arm's-length contract, we would allow the lessee the option of valuing the production on either the gross proceeds received by the affiliate under the arm's-length resale contract, subject to the above stated exceptions for oil sold by the lessee at arm's length, or index prices. Again, for the Rocky Mountain Region, a series of prescribed benchmarks would be used instead of index prices.

The lessee could make separate elections for oil that it exchanges at arm's length and oil that it transfers to an affiliate that resells the oil. However, each of these elections must be for a 2-year period, and the lessee would value all oil in each of these categories in the same manner.

Valuation of Oil Not Sold at Arm's Length

For California and Alaska: ANS spot price less a location/quality differential would apply.

For the Rocky Mountain Region: (Utah, Colorado, Wyoming, Montana, North Dakota, and *South Dakota*): The first applicable of the following benchmarks would apply:

1. The highest bid under an MMS-approved tendering program in which the lessee:

a. Offers and sells at least 30 percent of its production from both Federal and non-Federal leases in the area, and

b. Receives at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

2. The volume-weighted average of the lessee's and its affiliate's arm's-length contract prices for the purchase or sale of oil from the field or area. The total volume purchased or sold under those contracts must exceed 50 percent of the lessee's and its affiliate's production from both Federal and non-Federal leases in the same field or area.

3. The spot price for West Texas Intermediate crude at Cushing, Oklahoma, adjusted for location and quality.

4. If all of the first three benchmarks result in an unreasonable value, the MMS Director could establish an alternative valuation method.

For the OCS and Mid-Continent (other than California, Alaska, and the six-State Rocky Mountain Region): A market center spot price less a location/quality differential from the market center to the lease would apply.

Location/Quality Adjustments to Index Prices

If the lessee used index pricing to value its production, it would adjust the index price for location/quality differentials using:

1. A location/quality differential contained in the lessee's own arm's-length exchange agreement, or

2. An MMS-calculated location/quality differential. MMS would publish annually a series of differentials based on data MMS would collect on Form MMS-4415.

The lessee could also claim a transportation allowance when valuing oil based on either index or arm's-length gross proceeds as discussed below. Quality bank adjustments based on applicable pipeline quality bank specifications could also be taken if they did not duplicate the differentials above.

Transportation Allowances

Arm's-length transportation contracts

If the lessee or its affiliate transports its oil under an arm's-length transportation contract, the lessee could claim a transportation allowance for the actual costs incurred under that contract.

Non-arm's-length transportation contracts

If the lessee or its affiliate transports its oil under a non-arm's-length transportation contract, the lessee could claim a transportation allowance based on its reasonable, actual costs including operating and maintenance expenses, overhead, depreciation, and a return on investment using a rate of return equal to the industrial bond yield index for Standard and Poor's BBB rating. We would not allow Federal Energy Regulatory Commission tariffs as an exception to computing actual costs.

Subsea Gathering

We would include language in the preamble stating that MMS will review movement of bulk production from subsea completions to a platform on the ocean surface on a case-by-case basis to determine whether it is gathering or qualifies as transportation. Recognizing that this issue is primarily a gas issue,

MMS intends to resolve it by issuing separate regulations or policy guidance.

Non-Binding Valuation Guidance

We would provide that the Assistant Secretary for Land and Minerals Management or his/her delegate may issue binding valuation determinations. [FR Doc. 99-6147 Filed 3-11-99; 8:45 am]

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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; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Pennsylvania Regulatory Program (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. Pennsylvania has submitted this proposed amendment to reflect changes made to the Pennsylvania Surface Mining Conservation and Reclamation Act (PASMCRRA) by Acts 173 and 43. The proposed amendment also contains regulations added, amended or deleted in responses to these changes. This proposal modifies some requirements and adds other requirements dealing with reining and reclamation, postmining discharges, and water supply protection/replacement.

DATES: Written comments must be received by 4:00 p.m., E.D.T. April 12, 1999. If requested, a public hearing on the proposed amendment will be held on April 6, 1999. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T., on March 29, 1999.

ADDRESSES: Written comment and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the address listed below during normal

business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, Post Office Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5103.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments, can be found in the July 30, 1982, **Federal Register** (47 FR 33079). Subsequent actions concerning the Pennsylvania program amendments are identified at 30 CFR 938.25.

II. Discussion of the Proposed Amendment

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 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."

Pennsylvania enacted Act 173 in 1992 and Act 43 in 1996. These Acts amended PASMCR. In the document titled "Provisions of Pennsylvania's Statute—Surface Mining Conservation and Reclamation Act—Submitted for Program Amendment," PADEP indicated that not all of the changes to PASMCR resulting from Acts 173 and 43 are relevant to Pennsylvania's approved program. Only changes that are relevant to the approved program are

being submitted for program amendment. These changes are summarized below.

PASMCR

Under § 3. "Definitions," PADEP is proposing to add definitions for "Government-financed Reclamation Contract," "Total Project Costs," and "No-cost Reclamation Contract". The amendment proposes to amend the definition for "Surface Mining Activities," by specifically excluding from the definition the following four activities: (1) extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8, (2) extraction of coal as an incidental part of Federal, State or local government highway construction pursuant to regulations promulgated by the Environmental Quality Board, (3) the reclamation of abandoned mine lands not involving extraction of coal or spoil disposal under a written agreement with the property owner and approved by the department, and (4) activities not considered to be surface mining as determined by the United States Office of Surface Mining Reclamation and Enforcement and set forth in department regulations.

PADEP is proposing to amend PASMCR § 3.1, "Operator's License; Withholding or Denying Permits or Licenses; Penalty." The proposed changes deal with licensing requirements for surface and underground operators and changes that relate to ownership and control and the criteria for permit issuance.

PADEP is proposing to amend PASMCR § 4 titled, "Mining Permit; Reclamation Plan; Bond." In subsection (a) this amendment proposes to replace the term "minerals" with the term "coal." Lesser vegetation standards for proposed re-mining areas previously disturbed by surface mining activities that were not reclaimed to the standards of PASMCR are discussed in subsection (a)(2). Subsection (d) adds life insurance policies, annuities and trust funds to the list of acceptable forms of collateral bonds. Subsection (d)(2) gives the Department the authority to establish new forms of financial assurance in the bonding program, including financial assurance for postmining discharges. Subsection (g) allows any person with an interest in the bond to apply for a bond release. New subsections (g.1), (g.2) and (g.3) are proposed to be added to PASMCR. These subsection allow bond release in situations where there is a postmining discharge associated with the permit and the permittee provides financial

assurance for long-term treatment of the discharge. Bond release in contingent upon the construction of passive treatment systems and the establishment of a site-specific trust fund for each discharge. Subsection (h) is proposed to be amended to define bond forfeiture procedures and surety reclamation of bond forfeiture sites.

PADEP is proposing to amend PASMCR § 4.2 titled "General Rule Making; Health and Safety." Subsection f(2) is amended to assign responsibility for replacing water supplies affected by surface mining activities. Under certain conditions defined in this subsection, a mine operator is presumed to be liable for water loss, contamination or diminution. Section (i) is a new subsection added to define PADEP's authority to enter property to conduct inspections or investigations.

PADEP is proposing to amend PASMCR § 4.6 titled, "Remining of Previously Affected Areas." The bond release procedures under section (i) were modified to make the amount of bond released at each stage of reclamation the same as specified in PASMCR § 4(g). The amendment to subsection (j) changes the revegetation success standard that PADEP is authorized to require when it determines a different standard is integral to the proposed pollution abatement plan.

PADEP is proposing to amend PASMCR § 4.7, "Anthracite Mine Operators Emergency Bond Fund," to open the emergency bond fund to anthracite surface coal mine operators. The fund is presently open only to deep mine operators.

PADEP is proposing to add § 4.8 to PASMCR. This section is titled, "Government-financed Reclamation Contracts Authorizing Incidental and Necessary Extraction of Coal or Authorizing Removal of Coal Refuse." Subsection (a) of this proposed addition provides the circumstances under which a person may engage in extraction of coal or removal of coal refuse pursuant to a government-financed reclamation contract. These activities will not require a surface mining permit if the person engaging in these activities demonstrates eligibility to secure special authorization pursuant to this section. PADEP will be responsible for determining eligibility.

Subsection (b) of proposed § 4.8 states the conditions under which a person is eligible to secure a special authorization. Subsection (b)(1) requires the contractor or any related party or subcontractor to have no history of past or continuing violations which show lack of ability to comply with the act or

rules. For the purposes of this section, the term "related party" means any partner, associate, officer, parent corporation, affiliate or person by or under common control with the contractor. Subsection (b)(2) provides that the person has submitted proof that any violation related to the mining of coal by the contractor or any related party or subcontractor which will act under its direction has been corrected or is in the process of being corrected. For purposes of this section, the term "related party" means any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the contractor. Subsection b(3) provides that the person has submitted proof that any violation by the contractor or by any person owned or controlled by the contractor or by a subcontractor which acts under its direction of any law, rule or regulation of the United States or any state pertaining to air or water pollution has been corrected or is in the process of being satisfactorily corrected.

Subsection b(4) provides that the person or any related party or subcontractor which will act under the direction of the contractor has no outstanding unpaid civil penalties which have been assessed for violations of either this act or the Clean Streams Law (Pennsylvania Law (P.L.) 1987, No. 394) in connection with either surface mining or reclamation activities. Subsection b(5) provides that the person or any related party or subcontractor which will act under the direction of the contractor has not been convicted of a misdemeanor or felony under this act or the acts set forth in subsection (e) and has not had any bonds declared forfeited by the department.

Subsection (c) establishes the conditions under which any eligible person who proposes to engage in extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract may request and secure special authorization from the department to conduct such activities under this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction of coal or authorizing removal of coal refuse and the person requesting such authorization has affirmatively demonstrated to the department's satisfaction that he has satisfied the provisions of this section. A special authorization shall only be granted by the department prior to the commencement of extraction of coal or commencement of removal of coal

refuse on a project area. This section further lists factors that must be demonstrated in order to be considered for a special authorization.

Subsection (d) provides that the contractor will pay any applicable per-ton reclamation fee established by the United States Office of Surface Mining Reclamation and Enforcement for each ton of coal extracted pursuant to a government-financed reclamation project.

Subsection (e) provides that prior to commencing extraction of coal or commencement of removal of coal refuse pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, the Clean Streams law, the Air Pollution Control Act (1959 P.L. 2119, No. 787), the Coal Refuse Disposal Control Act (P.L. 1040, No. 318), the Dam Safety and Encroachments Act (P.L. 1375, No. 325), and the Solid Waste Management Act (P.L. 380, No. 97). An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the above acts. For government-financed reclamation contracts other than a no-cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above. The performance bond which is provided by the contractor under a contract other than a government-financed reclamation contract shall be deemed to satisfy the requirements of this section provided that the amount of the bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection. For no-cost reclamation projects which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of

reclamation which will occur during a period specified.

Subsection (f) provides that the department shall insert in government-financed reclamation contracts conditions which prohibit coal extraction pursuant to government-financed reclamation in areas subject to the restrictions of section 4.2 except as surface coal mining is allowed pursuant to that section.

Subsection (g) provides that any person engaging in extraction of coal pursuant to a no-cost government-financed reclamation contract authorized under this section who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate supply adequate in quantity and quality for the purposes served.

Subsection (h) provides that extraction of coal or removal of coal refuse pursuant to a government-financed reclamation contract cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal. Nothing in this section shall prohibit the department's entry onto land where such entry is necessary in the exercise of police powers.

PADEP is proposing to add § 4.12 to PASMCR. This section is titled, "Financial Guarantees to Insure Reclamation; Payments to the Remining Financial Assurance Fund." Subsection (a) authorizes PADEP to establish programs to provide financial guarantees to insure reclamation to operators who reclaim abandoned mine lands through remining. This section describes how the programs will be funded and requires PADEP to establish underwriting methods.

Subsection (b) provides that premium payments will be deposited into the Remining Financial Assurance Fund and will be reserved in a special account to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used pursuant to section 18(a.1) and (a.2).

Subsection (c) provides that payments under this subsection shall excuse the operator from the requirement to post a bond under this act with respect to the remining permit for which payment is made.

Subsection (d) provides that the financial guarantees program may be discontinued immediately and notice published in the Pennsylvania Bulletin if twenty-five per cent or greater of the outstanding bond obligation for the financial guarantees program is subject

to forfeiture. The special account established in the Remining Financial Assurance Fund for the financial guarantees program shall be the sole source of funds underwriting the financial guarantees program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

PADEP is proposing to add § 4.13 to PASMCRRA. This section is titled, "Reclamation Bond Credits."

Subsection (a) provides that a bond credit, financially backed by a special account for that purpose established in section 18(a.2), in the form of a bond letter, may be issued by the department to a licensed mine operator for voluntary reclamation of abandoned mine lands as approved by the department. This section specifies the conditions that PADEP will use to determine whether or not to issue a bond credit.

Subsection (b) provides that an operator may apply bond credits which have been issued by the department against any reclamation bond obligation selected by the operator on unmined or previously mined areas except as specified in this section.

Subsection (c) provides that the department may approve utilization of a bond credit in combination with conventional collateral or surety agreements.

Subsection (d) provides that the department may require, as a condition of granting the bond credit, that the operator post a contract performance bond to insure that the operator completes the reclamation proposed to result in the bond credit. The performance bond is to be at least in an amount necessary to ensure reclamation of those areas proposed to be reclaimed and shall be released by the department upon completion of the work described in the approved reclamation plan.

Subsection (e) provides that bond credits are transferable to another

qualified operator approved by the department.

Subsection (f) provides that the special account established in the Remining Financial Assurance Fund for the bond credit program shall be the sole source of funds underwriting the bond credit program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

Subsection (g) provides that bond credits earned by a qualified operator may be used on a single permit or on multiple permits, whichever the operator chooses. A bond credit may be used two times; however, the bond credit cannot be used a second time until the department releases the bond credit from its first use. Any bond credit that is not used within five years from the date that it is earned or released will expire, including bond credits that have been transferred.

PADEP is proposing to amend § 18 of PASMCRRA. This section is titled, "surface Mining Conservation and Reclamation Fund; Remining Environmental Enhancement Fund; Remining Financial Assurance Fund; Department Authority for Awarding of Grants." Subsection (a) is amended to include section (a.1), a.2), (a.3) and (a.4). These subsections address the use of funds for the remining and reclamation incentives created by the amendments to PASMCRRA discussed earlier. These amendments create two special funds in the State Treasury to be known as the "Remining Environmental Enhancement Fund," and the "Remining Financial Assurance Fund." These subsections describe the source of funding for the funds and indicate that the Remining Environmental Enhancement Fund is to be used for operating a remining and reclamation incentive program, including designating areas suitable for reclamation by remining and establishing and operating a remining operator's assistance program, but not including a bond credit or financial

guarantees program. The Remining Financial Assurance Fund is to be used to provide financial assurance for the reclamation bond credit program set forth in section 4.13 and for the financial guarantees program set forth in section 4.12. Requirements for operator participation in the funds are listed.

Subsection (f) was modified to allow any licensed mine operator to propose reclamation of a bond forfeiture area.

Subsection (g) modifies the internal rules for the Mining and Reclamation Advisory Board, PADEP's advisory committee on matters relating to surface coal mining and reclamation.

PADEP is proposing to amend § 18.7 of PASMCRRA, titled, "Creation of Small Operator's Assistance Fund." The amendment limits PADEP's use of Small Operator Assistance Funds to uses authorized by the Office of Surface Mining Reclamation and Enforcement and the Federal Surface Mining Control and Reclamation Act of 1977.

PADEP is proposing to add § 18.9 to PASMCRRA. This new section is titled, "Search Warrants" and provides that the PADEP may apply for a search warrant for the purposes of inspecting or examining any property, premises, place, building, book, record, or other physical evidence, of conducting tests, of taking samples, or of seizing books, records and other physical evidence. The warrant shall be issued on probable cause. The amendment further defines sufficient probable cause.

PADEP is proposing to add § 18.10 to PASMCRRA. This new section is titled, "Construction of Act" and signifies PADEP's intent that PASMCRRA not violate the Federal Clean Water Act or the Federal Surface Mining control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

The additions and changes to regulations proposed by the amendment are described as follows:

The amendment will result in changes to the following existing provisions of the Pennsylvania program:

[Title 25 of the PA Code]

86.142	87.1	88.1	89.5
86.151-152	87.119	88.107	
86.156-86.158 (inclusive)	84.147	88.121	
86.161		88.209	
86.168			
86.171			
86.174-86.175			
86.182			
86.195			

The following sections are proposed to be added to the Pennsylvania program:

[Title 25 of the PA Code]

86.251–86.253 (inclusive)
86.281–86.284 (inclusive)
86.291–86.295 (inclusive)
86.351–86.359 (inclusive)

The following sections are proposed to be deleted:

[Title 25 of the PA Code]

87.11–87.21 (inclusive)	88.92	89.52–89.53	90.102–90.103
87.102–87.103	88.93		
	88.187–88.188		
	88.292–88.293		

A brief summary of the proposed changes and additions to the Pennsylvania program are found below.

Chapter 86

The changes made to 25 PA Code 86.142 “Definitions,” are the additions of definitions for “Annuity,” “Trustee,” and “Trust Fund.”

A revision to 25 PA Code 86.151 “Period of Liability,” provides that liability under bonds related to the risk of water pollution from coal refuse disposal activities shall continue for a period of time after completion of the activities. The period of time will be determined by PADEP on a case-by-case basis. Subsection (j) was added to emphasize an operator’s responsibility to treat discharges of mine drainage emanating from or hydrologically connected to the site.

A revision proposed to subsection (a) of 25 PA Code 86.152, “Bond Adjustments,” provides that PADEP may require additional bond if the cost of reclamation, restoration or abatement work increases so that an additional amount of bond is necessary. Subsection (b) is modified to include the estimated costs of restoration or abatement responsibilities as factors to be satisfied when an operator is seeking a bond reduction.

A revision proposed to 25 PA Code 86.157, “Form of the Bond,” provides for the new types of collateral bonds allowed by proposed changes to PASMCR. These bond types include annuities, trust funds, and life or property and casualty insurance.

Two revisions are proposed for 25 PA Code 86.157, “Special Terms and Conditions for Surety Bonds.” Subsection (3) is revised to read as follows: “The Department will not accept a single bond from a surety company for a permittee if the single bond is in excess of the surety company’s maximum single risk exposure as provided in The Insurance Company Law of 1921 (40 P.S. §§ 341–

991), unless the surety company complies with The Insurance Company Law of 1921 for exceeding the maximum single risk exposure.” Subsection (4) is proposed to be deleted and the remaining subsections are proposed to be renumbered accordingly.

Several revisions are proposed for 25 PA Code 86.158, “Special Terms and Conditions for Collateral Bonds.” Subsection (c)(6) was modified to read, “The Department will only accept certificates of deposit from banks or banking institutions licensed or chartered to do business in the United States.” New subsections (e) and (f) were added. Subsection (e) specifies the conditions that must be fulfilled to secure a collateral bond in the form of a life insurance policy. Subsection (f) specifies the conditions that must be met to secure a collateral bond in the form of an annuity or a trust fund. Finally the subsection that was formerly labeled as (e) is proposed to be renumbered as subsection (g).

A sentence is proposed to be added at the end of section 25 PA Code 86.161, “Phased Deposits of Collateral.” The sentence is, “Interest accumulated by phased deposits of collateral shall become part of the bond, and may be used to reduce the amount of the final phased deposit.”

Several revisions are proposed for 25 PA Code 86.168, “Terms and Conditions for Liability Insurance.” The revision to subsection (a) requires a permittee to submit proof of liability insurance coverage before a license is issued. The revision to subsection (b) requires liability insurance to be written on an occurrence basis and to provide for bodily injury. Subsection (c) adds a sentence that states, “The limits of the rider shall be at least equivalent to the limits of the general liability portion of the policy.” Subsection (d) requires the insurance policy to include a rider requiring notification to PADEP within 30 days prior to substantive changes in the policy or prior to termination or

failure to renew. Subsection (e) increases the minimum insurance coverage for bodily injury to \$500,000 per person and \$1 million aggregate and minimum insurance coverage for property damage to \$500,000 for each occurrence and \$1 million aggregate. Subsection (f) changes the regulatory action to be taken in the event a permittee fails to maintain the insurance. If the insurance is not maintained, PADEP will issue a notice of intent to suspend the license or permit. If the proof of insurance is not submitted within 30 days, the Department will suspend the license or permit.

A proposed revision to 25 PA Code 86.171, “Procedures for Seeking Release of Bond,” allows any person having an interest in the bond to file an application with PADEP for bond release. Subsection (b)(6) is added which provides that the newspaper advertisement for bond release must state whether any postmining pollutional discharges have occurred and describe the type of treatment provided for the discharges. The former subsection (b)(6) has been renumbered to (b)(7). Subsection (f)(4) changed a reference from subsection (g) to subsection (h). Subsection (g) has been added. This subsection states, “If the permittee is unwilling or unable to request bond release, and if the criteria for bond release have been satisfied, the Department may release the bond by following the procedures of subsections (a)(2), (b), (d)–(f).” Former subsection (g) has been renumbered to subsection (h).

Some minor modifications are proposed for 25 PA Code 86.174, “Standards for Release of Bonds.” The proposed regulation replaces the Roman Numeral “I” with the Arabic “1” in subsection (a), and inserted the word “Additional” at the beginning of subsection (d).

Some minor modifications are also made to 25 PA Code 86.175, “Schedule for Release of Bond.” Subsection (a)

provides that no bond will be released until the Department finds that the permittee has complied with §§ 86.171, 86.172 and 86.174 (relating to procedures for seeking release of bond; criteria for release of bond; and standards for release of bonds). Subsection (b)(3) has been modified by deleting the following phrase, “. . . and final inspection and procedures of § 86.171 (relating to procedures for seeking release of bond) have been satisfied.”

Several modifications to 25 PA Code 86.182, “Procedures,” have been proposed. Subsection (a)(3) has been added. This section provides that if bond forfeiture is required, PADEP will notify the surety of the requirement to pay the amount of the bond to PADEP within 30 days. The money will be held in escrow. If court of competent jurisdiction finds that the Commonwealth was not entitled to all or a portion of the amount forfeited, the interest shall accrue proportionately to the surety in the amount determined to be improperly forfeited. Former subsection (a)(3) has been renumbered to (a)(4). Subsection (d) has been added. This subsection provides that a surety can reclaim a site in lieu of paying the amount of forfeited bond within 30 days. The remainder of this subsection provides the procedures to be followed if a surety elects to reclaim a site. Former subsections (d)–(f) are renumbered as subsections (e)–(g).

A minor modification was made to 25 PA Code 86.195, “Penalties Against Corporate Officers.” A cross-reference was revised from § 87.14 to § 86.353 to be consistent with other changes to Chapter 86.

PADEP is proposing to add numerous sections dealing with incentives to encourage reining of abandoned mine lands and bond forfeiture sites. These sections will be summarized briefly below.

25 PA Code 86.251, “Purpose,” gives the purpose of this section as encouraging reining to eliminate hazards to human health and safety, abating pollution of surface and groundwaters and the contribution of sediment to adjacent areas, restoring land to beneficial uses and recovering remaining coal resources.

25 PA Code 86.252, “Definitions,” adds definitions for “Abandoned mine lands,” “Act,” “Bond credit,” “Financial guarantee,” “Reining,” “Reining area,” and “Tangible net worth.”

25 PA Code 86.253, “Operator and Project Qualification,” subsection (a) gives the requirements an operator must meet to participate in the reining and reclamation incentives program.

Subsection (b) provides the requirements an operator must demonstrate to get a project approved under the reining and reclamation incentives program.

PADEP proposes to add 25 PA Code 86.281, “Financial Guarantees to Insure Reclamation—General.” This section has four subsections. Subsection (a) describes a special account in the Reining Financial Assurance Fund to be used to financially assure bonding. Subsection (b) provides that operators must demonstrate their eligibility to participate in the program. Subsection (c) was not submitted for approval. Subsection (d) provides limits on the amount of financial guarantees the Department will issue on permits. Subsection (e) describes use of the Fund to complete reclamation of forfeited sites.

25 PA Code 86.282, “Participation Requirements,” describes demonstrations required of an operator to be able to participate in the program. The operator must demonstrate one of the following: Under subsection (a)(1), the operator must be able to post a collateral bond and demonstrate appropriate experience in coal mining and reclamation, under subsection (a)(2) the operator must be able to obtain a surety bond or letter of credit collateral bond, or under subsection (a)(3) the operator must prove eligibility to self-bond. Subsection (b) provides that an operator will not be approved to participate in the program when the financial guarantees exceed limits established in 25 PA Code 86.281(d). Subsection (c) provides that any person submitting false information in the financial test will render the operator ineligible to participate in the program.

25 PA Code 86.283, “Procedures,” lists the criteria that govern an operator’s participation in the program. Subsection (a) discusses payments to the fund. Subsection (b) requires the operator to make the annual payment until the bond is reduced or released. Subsection (c) provides that an operator approved to participate in the program is not required to pay the reclamation fee for the reining area. Subsection (d) indicates the Department will issue a letter to the operator specifying the amount of money in the special account which has been reserved as collateral for the reclamation of the reining area. Subsection (e) provides the obligation will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit.

25 PA Code 86.284 is titled “Forfeiture.” Subsection (a) provides that a bond forfeiture will result in the

Department declaring forfeit the amount reserved for the operator in the special fund. Subsection (b) indicates that forfeiture will not relieve the operator from meeting requirements of PASMCR. Subsection (c) indicates that on declaration of forfeiture, the Department will use bond money and reserve funds to complete reclamation of the minesite. Subsection (d) provides that the financial guarantees program will be discontinued immediately if 25% or more of the total outstanding financial guarantees are declared forfeit. Subsection (e) lists forfeiture actions that could cause the financial guarantees program to be suspended.

25 PA Code 86.291 is titled, “Financial Assurance for Bond Credit—General.” Subsection (a) describes a special account within the Reining Financial Assurance Fund that may be used to assure bond obligations of operators who voluntarily complete a reclamation project under the bond credit program. Subsection (b) describes how the bond credit will work. Subsection (c) provides that when a permit where a bond credit is being used is declared forfeit, the reserve funds will be used by the Department in accordance with the procedures and criteria in §§ 86.187–86.190.

25 PA Code 86.292 is titled “Procedures and Requirements.” Subsection (a) lists the steps a mining operator must take to apply for a bond credit. Subsection (b) indicates that if the proposed reclamation activities have the potential for offsite impacts, the Department may require as a condition of approving the reclamation plan, a performance bond in the amount necessary to ensure the operator completes the reclamation as proposed. Subsection (c) lists the provisions of an agreement between the operator and the Department that will be executed on approval of the proposed reclamation plan. Subsection (d) discusses the conditions under which the bond credit may be amended or terminated. Subsection (e) describes the enforcement actions the Department may take against an operator who fails to complete the reclamation as specified in the agreement.

25 PA Code 86.293, “Issuance,” provides that a bond credit letter will be issued by the Department upon a finding that the operator has met the terms of the agreement.

25 PA Code 86.294 is titled “Uses and Limitations.” Subsection (a) indicates an operator may apply a bond credit to an original or existing bond. Subsection (b) indicates an operator may use a bond credit on a single permit or multiple permits. Subsection (c) indicates that a

bond credit may be used in combination with other types of bonds. Subsection (d) indicates a bond credit may be transferred to a qualified operator. Subsection (e) provides that a bond credit may not be used to bond water loss or to bond long-term water treatment. Subsection (f) indicates procedures an operator must follow if a discharge not meeting effluent limits develops on a permit where a bond credit is being used. Subsection (g) indicates bond credits will be released prior to any surety or collateral bonds. Subsection (h) indicates a bond credit that is not used within five years from the date it is issued or released will expire.

25 PA Code 86.295 is titled "Forfeiture." Subsection (a) indicates that the Department will declare forfeit the amount reserved in the bond credit special account if forfeiture is declared under §86.181. Subsection (b) indicates the Department's declaration of forfeiture does not excuse the operator from meeting the requirements of this chapter or the act. Subsection (c) indicates that upon collection of the bond credit, the Department will use bond money and reserved funds to complete reclamation of the mine site.

25 PA Code 86.351, "License Requirement," provides that a person who intends to mine coal as an operator must first obtain a mine operator's license.

25 PA Code 86.352, "Mine Operator's License Application," lists the information required by the application for license.

25 PA Code 86.353, "Identification of Ownership," lists the information that must be included in the application for each person who owns or controls the applicant.

25 PA Code 86.354, "Public Liability Insurance," requires an applicant to provide a certificate of liability insurance for the term of the license.

25 PA Code 86.355 is titled "Criteria for Approval of Application." Subsection (a) describes the circumstances under which the Department will not issue, renew or amend the license. Subsection (b) provides the Department will issue a notice of intention not to issue, renew or amend a license for the reasons in subsection (a). Subsection (c) indicates the Department will notify the applicant in writing of its intention not to issue, renew or amend the license and the opportunity for informal hearing. Subsection (d) indicates that a person who opposes the Department's decision on issuance, renewal or amendment of a license has the burden of proof. Subsection (e) indicates that for the

purposes of this section, "adjudicated proceeding," means a final unappealed order of the Department or a final order of the EHB or other court of competent jurisdiction.

25 PA Code 86.356 is titled "License Renewal Requirements." Subsection (a) provides for annual renewal of the license. Subsection (b) requires the application for renewal to be made at least 60 days before the current license expires. Subsection (c) provides that the Department will notify the operator 60 days prior to license expiration of its intent not to renew a license.

25 PA Code 86.358 is titled "Suspension and Revocation." Subsection (a) lists the reasons the Department may suspend or revoke a license. Subsection (b) indicates that Department will provide an informal conference before suspending or revoking a license.

25 PA Code 86.359 is titled "Fees." Subsection (a) lists the fees needed to secure a license. Subsection (b) provides the circumstances under which a fee may be refunded.

Chapter 87

Several terms were proposed to be added and one was proposed to be deleted in section 25 PA Code 87.1, "Definitions." Definitions were proposed to be added for the terms "De minimis cost increase," "Water supply," and "Water supply survey." The definition of "Dry weather flow" was proposed to be deleted from this section.

As stated previously, sections 25 PA Code 87.11-87.21 inclusive were proposed to be deleted from Chapter 87 and moved into Chapter 86. The proposed amendment rennumbers these sections as 25 PA Code 86.351-86.359 (inclusive).

The amendment proposes to delete 25 PA Code 87.102, "Hydrologic Balance: Effluent Limits," and 25 PA Code 87.103, "Precipitation Event Exemption."

The amendment proposes to amend 25 PA Code 87.119, "Hydrologic Balance: Water Rights and Replacement." Subsection (a) provides that an operator or person engaged in government financed reclamation who affected a water supply must restore or replace the water supply. This subsection also lists the criteria a water supply must meet for it to be considered adequate. Subsection (b) indicates that a surface mine operator or owner is responsible for pollution within 1000 feet of the boundaries of areas bonded and affected by coal mining operations except for haul roads. Subsection (c) lists defenses to the presumption of

liability defined in subsection (b). Subsection (d) requires that the mine operator or mine owner notify the Department and provide all information which supports a defense to the presumption of liability. Subsection (e) allows the Department to use moneys from the Surface Mining Conservation and Reclamation Fund to restore or replace water supplies if the Department finds that immediate replacement of the supply used for potable or domestic purposes is required to protect public health or safety and the mine owner or operator has failed to comply with Departmental orders. Subsection (f) states the Department will recover costs of restoration or replacement from a surface mine operator or mine owner. Subsection (g) provides that a surface mine operator or mine owner who successfully appeals a Department order is entitled to recovery of reasonable costs. Subsection (h) permits a landowner, water supply user or water supply company to pursue other remedies that may be available in law or in equity. Subsection (i) provides that a Department order issued under this section which is appealed will not be used to block issuance of new permits or the release of bonds when a stage of reclamation work is completed. Subsection (j) provides that nothing in this section limits the Departments authority under section 4.2(f)(1) of SMCRA. Subsection (k) provides that a surface mining operation conducted under a surface mining permit issued by the Department before February 16, 1993, is not subject to subsections (b)-(i), but is subject to subsections (a) and (j).

25 PA Code 87.147 is titled "Revegetation: General Requirements." Subsection (b)(1) was added. This subsection provides for a lesser revegetation success standard for areas proposed to be reaffected when these areas were previously disturbed by surface mining activities and were not reclaimed to the standards of SMCRA.

Chapter 88

Three new definitions are proposed to be added to Chapter 88 and one is proposed to be deleted. The terms proposed for addition to 25 PA Code 88.1 are, "De minimis Cost Increase," "Water Supply," and "Water Supply Survey." The term "Dry Weather Flow" is proposed to be deleted from 25 PA Code 88.1.

The amendment proposes to delete 25 PA Code 88.92, "Hydrologic Balance: Effluent Limits," and 25 PA Code 88.93, "Precipitation Event Exemption."

The amendment proposes to amend 25 PA Code 88.107, "Hydrologic

Balance: Water Rights and Replacement." The proposed amendment language is identical to that proposed for 25 PA Code 87.119 summarized above.

25 PA Code 88.121 is titled, "Revegetation: General Requirement." Subsection (b) is proposed to be amended to provide for a lesser revegetation success standard for areas proposed to be reaffected when these areas were previously disturbed by surface mining activities and were not reclaimed to the standards of SMCRA.

The amendment proposes to delete 25 PA Code 88.187, "Hydrologic Balance: Effluent Limits," and 25 PA Code 88.188, "Precipitation Event Exemption."

25 PA code 88.209 "Revegetation: General Requirement" subsection (b) is proposed to be amended to provide for a lesser revegetation success standard for areas proposed to be reaffected when these areas were previously disturbed by surface mining activities and were not reclaimed to the standards of SMCRA.

The amendment proposes to delete 25 PA Code 88.292, "Hydrologic Balance: Effluent Limits," and 25 PA Code 88.293, "Precipitation Event Exemption."

Chapter 89

One definition, "Dry Weather Flow," is proposed to be deleted from 25 PA Code 89.5.

The amendment proposes to delete 25 PA Code 89.52, "Water Quality Standards, Effluent Limitations and Best Management Practices," and 25 PA Code 89.53, "Precipitation Event Exemption."

Chapter 90

One definition, "Dry Weather Flow," is proposed to be deleted from 25 PA Code 90.1.

The amendment proposes to delete 25 PA Code 90.102, "Hydrologic Balance: Water Quality Standards, Effluent Limitations and Best Management Practices," and 25 PA Code 90.103, "Precipitation Event Exemption."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administration Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on March 29, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If a public hearing is held, it will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meetings will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed 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 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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(c)(C) of the National Environmental Policy Act (42 U.S.C. 4332(c)(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 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.*). 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a

“significant regulatory action” under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 938

Intergovernment relations, Surface mining, Underground mining.

Dated: March 5, 1999.

Allen D. Klein,

Appalachian Regional Coordinating Center.

[FR Doc. 99-6109 Filed 3-11-99; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 412, 413, 419, 489, 498, and 1003

[HCFA-1005-3N]

RIN 0938-A156

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for the third time on a proposed rule published in the **Federal Register** on September 8, 1998, (63 FR 47552). In that rule, as required by sections 4521, 4522, and 4523 of the Balanced Budget Act of 1997, we proposed to eliminate the formula-driven overpayment for certain outpatient hospital services, extend reductions in payment for costs of hospital outpatient services, and establish in regulations a prospective payment system for hospital outpatient services (and for Medicare Part B services furnished to inpatients who have no Part A coverage.)

DATES: The comment period is extended to 5 p.m. on June 30, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1005-P, P.O. Box 26688, Baltimore, MD 21207-0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1005-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements, mail a copy of comments to: Health Care Financing Administration.

Office of Information Services,
Standards And Security Group,
Division of HCFA Enterprise
Standards, Room N2-14-26, 7500
Security Boulevard, Baltimore, MD
21244-1850. Attn: John Burke HCFA-
1005-P, and

Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Attn: Allison Herron Eydt,
HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT:
Janet Wellham, (410) 786-4510.

SUPPLEMENTARY INFORMATION:

On September 8, 1998, we issued a proposed rule in the **Federal Register** (63 FR 47552) that would do the following:

- Eliminate the formula-driven overpayment for certain hospital outpatient services.
- Extend reductions in payment for costs of hospital outpatient services.
- Establish in regulations a prospective payment system for hospital outpatient services, for partial hospitalization services furnished by community mental health centers, and for certain Medicare Part B services furnished to inpatients who have no Part A coverage.
- Propose new requirements for provider departments and provider-based entities.
- Implement section 9343(c) of the Omnibus Budget Reconciliation Act of 1986, which prohibits Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital unless the services are furnished under an arrangement with the hospital.
- Authorize the Department of Health and Human Services' Office of Inspector General to impose a civil money penalty against any individual or entity who knowingly presents a bill for

nonphysician or other bundled services not provided directly or under such an arrangement.

The comment period for the proposed rule closed on November 9, 1998. Because of the scope of the proposed rule, hospitals and numerous professional associations requested more time to analyze the potential consequences of the rule. Therefore, we published a notice on November 13, 1998, (63 FR 63429), which extended the comment period until January 8, 1999. Because of further requests from hospitals and professional associations, we published another notice on January 12, 1999, (64 FR 1784) extending the comment period to March 9, 1999. Due to additional requests for more time to analyze the potential consequences of the proposed rule, we are again extending the comment period until June 30, 1999.

Numerous hospital industry groups that were preparing to comment on the proposed rule have requested extensive comparisons of their databases and those used to develop the proposed prospective payment system for hospital outpatient services. These groups are also requesting the provision of detailed programming information and analysis of individual proposed rates, including examination of their underlying data. Because of frequent modifications to our databases during the initial development of the prospective payment system and those changes that needed to be made to accommodate the final legislative provision enacted under the Balanced Budget Act of 1997, we must make extensive revisions of the databases in order to respond to the industry. Therefore, we are reprogramming and documenting our databases in order to make interaction with the potential commenters more efficient.

Published elsewhere in this issue of the **Federal Register** is a notice extending the comment period for the proposed rule published in the June 12, 1998, **Federal Register** in which we propose to rebase Medicare payment rates and update the list of approved procedures for ambulatory surgical centers (ASCs) (63 FR 32290). We are extending the comment period for the June 12, 1998, ASC proposed rule to be concurrent with the extended comment period for the September 8, 1998, hospital outpatient proposed rule because Medicare payments to ASCs are closely linked to the manner in which Medicare proposes to pay hospitals under a prospective payment system for surgical services furnished on an outpatient basis.