

operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce.” (64 FR 70838, 70844 (12/17/99)).

Even though Pennsylvania’s revised definition of surface mining operations removes the inclusion of activities involved in or related to underground mining it still includes surface activity connected with underground mining. In the Pennsylvania Bulletin, Pennsylvania states “[i]n the definition of ‘surface mining operations,’ the reference to activities related to underground coal mining that affect the land surface has been deleted to clarify that surface mining operations do not include any surface effects of underground mining resulting from activities that were conducted beneath the land surface.” 29 Pa. Bull. 5292. Pennsylvania maintains that its rulemaking “is consistent with Federal requirements and that it addresses the difference between the physical characteristics of mining activities conducted on the surface as opposed to underground.” Id. Accordingly, we are approving the deletion of this language with the understanding that Pennsylvania will implement the definition of “surface mining operations” in the same manner as contemplated by 30 CFR 761.200(a) and find the deletion not inconsistent with the Federal regulations.

**25 Pa. Code 86.102(11).** This section provides that surface mining operations are not permitted within 100 feet of a cemetery unless there is valid existing rights. In addition to this existing restriction, Pennsylvania is adding that cemeteries may be relocated under 9 P.S. 41–52. The Federal counterpart at 30 CFR 761.11(g), also states that mining cannot occur within 100 feet of a cemetery unless there is valid existing rights and unless the cemetery is relocated in accordance with all applicable laws and regulations. Pennsylvania’s added language is consistent with the Federal regulation because it allows for the relocation of a cemetery and we are approving the change.

**25 Pa. Code 86.124(f) Procedures: Hearing requirements.** This section provides that the Department will prepare a recommendation on each complete petition received under this section and submit it to the Environmental Quality Board (EQB) within 12 months of receipt of the complete petition. This section could be viewed as less effective than the Federal regulations at 30 CFR 764.19(b) which require that, “a final written decision shall be issued by the regulatory

authority, including a statement of the reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. However, the enabling legislation for this section of the Pennsylvania regulations is located within Pennsylvania’s SMCRA, at 52 P.S. section 1396.4e(f) which states, “Within ten (10) months after receipt of the petition, the Department shall hold a public hearing \* \* \* within sixty (60) days after such hearing, the Department shall issue and furnish the petitioners and any other party to the hearing, a written decision regarding the petition and the reasons therefore.” This language has been previously determined to be consistent with, and no less effective than, SMCRA and the Federal regulations. With the Pennsylvania statutory language consistent with Federal law and regulations, we are not approving the revision in regulations to the extent that it could be interpreted as inconsistent with the enabling Pennsylvania statute and less stringent than SMCRA and the implementing regulations. We expect that Pennsylvania will continue to process unsuitability petitions in a manner consistent with State law.

**25 Pa. Code 86.125 Procedures: Hearing requirements.** Pennsylvania deleted the requirement at subsection (b) for a verbatim transcript of the petition hearing and moved the requirement to subsection (d). These changes are consistent with the Federal rule at 30 CFR 764.17(a) which requires a record of the petition hearing to be made and preserved according to State law.

Pennsylvania revised subsection (e) [renumbered from (b) to (e)] to provide that PADEP will give notice of the hearing by first class mail and also revised subsection (e)(3) to indicate the notice is to be sent to persons known to PADEP to have an ownership or other interest in the area covered by the petition. This is no less effective than the Federal regulations at 30 CFR 764.17(b)(2) which requires notice of the hearing to property owners by first class mail. Pennsylvania deleted the first class mail notification requirement of (e)(4) to the petitioner and intervenors and added subsection (f), which requires that notice of the hearing by certified mail shall be given to the petitioner and intervenors. These changes are no less effective than the Federal rules.

At subsections (g) and (h), Pennsylvania is changing some of the hearing responsibilities from the EQB to PADEP. Pennsylvania is also making

editorial changes at subsections (i) and (k). All of these changes do not render the Pennsylvania regulations inconsistent with the Federal regulations and we approving the changes.

Subsection (j) was revised to read as follows:

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(j) Within 60 days of the close of the public comment period, the Department will prepare a recommendation to the EQB, including a statement of the reasons for the recommendation and provide written notice of its recommendation to the petitioners and intervenors.

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For a full discussion of our finding on the time frames for providing a written notice to petitioners and intervenors, see the discussion under 25 Pa. Code 86.124(f) above. Section 86.125(j) is not approved to the same extent that 25 Pa. Code 86.124(f) is not approved.

**25 Pa. Code 86.126 Procedures: Decision.** Subsections (b) and (b)(1) were revised and subsection (b)(2) was added. These sections now read:

(b) The EQB will promptly send the decision by certified mail to the petitioner, intervenors and to the Office of Surface Mining Reclamation and Enforcement.

(1) If the decision is to designate an area as unsuitable for surface mining operations, the EQB will deposit and publish its decision as a regulation in the manner required by the Regulatory Review Act (71 P. S. sections 745.1–745.15); the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. sections 1102, 1201–1208 and 1602) known as the Commonwealth Documents Law and 45 Pa.C.S. Part I (relating to publication and effectiveness of Commonwealth documents).

(2) If the decision is not to designate an area as unsuitable for surface mining operations, the EQB will publish its decision in the Pennsylvania Bulletin within 30 days.

In 25 Pa. Code 86.126(b), Pennsylvania deleted the following provision: “A final written decision in the form of a regulation will be issued by the EQB within 60 days following the public hearing, including a statement of reasons for the decision.” We are approving this deletion because of the finding we made with regard to issuance of final decisions in 25 Pa. Code 86.124(f) above. As we noted in 25 Pa. Code 86.124(f), we expect that Pennsylvania will continue to process unsuitability petitions in a manner consistent with State law.

The changes to these subsections specify who will be sent the decision, the appropriate documents where EQB’s decisions are to be published and under what authority. The Federal rule at 764.19(b) requires that the final written decision shall be sent by certified mail