

change in definition to fragile lands is based on the Federal definition of fragile lands at 30 CFR 762.5. The Federal definition also describes areas that could be significantly damaged by surface coal mining operations. We have found that Pennsylvania's definition of fragile lands is no less effective than the Federal definition. As for the deletion of the buffer zone provisions of Pennsylvania's definition, there is no such similar provision in the Federal regulations. As a result, we cannot require Pennsylvania to retain the buffer zone protections because its deletion will not make Pennsylvania's program less effective than Federal regulations.

4. The revision to the definition of historic lands should include additional examples of what constitutes historic lands to include "historic or cultural districts and paleontological sites" at 25 Pa. Code 86.101.

We have considered this comment and find that the definition is substantively identical to, and no less effective than, the Federal definition of "historic lands" found at 30 CFR 762.5.

5. The proposed revision to the definition of surface mining operation at 25 Pa. Code 86.101 deletes references to surface impacts by underground mining, which is not consistent with SMCRA or the Federal regulations.

As stated in our findings, we promulgated a rule on December 17, 1999, at 30 CFR 761.200(a), concerning our interpretation of the definition of surface coal mining operations. Please refer to that finding for further discussion of the interpretative rule and its application. As previously discussed, we are approving the deletion of the 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).

6. The deletion of the words "on or eligible for inclusion" to the National Register of Historic Places at 25 Pa. Code 86.102(3), so that only sites included on the National Register are protected from mining, conflicts with Section 106 of the National Historic Preservation Act and 36 CFR 800.2.

The Federal rule at 30 CFR 761.11(c) does not prohibit mining that may affect places eligible for listing on the National Register of Historic Places. The Federal rule only prohibits mining that will affect places listed on the National Register of Historic Places. Therefore, we find the proposed revision consistent with Federal law.

7. Revising the regulations at 25 Pa. Code 86.103(e) that require the Department to notify Federal, State, or Local Agencies with jurisdiction over a

publicly owned park or place on the National Register of Historic Places when it is determined that the adverse effects will adversely affect the park or place.

The revision by Pennsylvania is to delete "may" and insert "will" with respect to adversely affect. The Federal regulation at 30 CFR 761.11(d) does not require procedures for joint approval when the publicly owned park or the historic place may be adversely affected by coal mining operations. The Federal rules only require such approval when it will affect such properties.

Accordingly, as we have determined in the findings, the proposed revision is no less effective than 30 CFR 761.11(d).

The PHMC also wants the old language of "historic" retained in this section. However, the deletion of the word "historic" is consistent with the Federal language at 30 CFR 761.11(d). Additionally, Pennsylvania has retained the reference to the National Register of Historic Places.

8. The changes to 25 Pa. Code 86.121 regarding criteria and procedures for designating areas unsuitable for mining does not adequately protect cultural resources because of its emphasis from areas designated as unsuitable for surface mining operations to areas exempt from designation as unsuitable for mining.

Pennsylvania's changes to 25 Pa. Code 86.121 make that section mean the same as the corresponding Federal regulation at 30 CFR 762.13. Because the meaning of that section is the same as the Federal regulation, we have found it to be no less effective than the Federal regulation and we approved it. We did not find that Pennsylvania's change provides less protection to cultural resources.

9. The revisions at 25 Pa. 86.123(c)(5) that give the right to petition only to people who can demonstrate an "injury in fact" was objected to because the PHMC believes such a test makes it so that only individuals who own property can petition to have land designated as unsuitable for mining.

Pennsylvania's "injury in fact" test is substantively identical to the Federal "injury in fact" test at 30 CFR 764.13(a). In its submission, Pennsylvania indicated that the purpose for adding this language is to make the section consistent with the Federal rules. We have determined that the proposed revision is one of the criteria for the right to petition for lands unsuitable. Therefore, we are finding that this proposed change is no less effective than the Federal regulations.

10. The PHMC objects to all the changes where the EQB was replaced by PADEP. PHMC objects to making

PADEP responsible for hearing lands unsuitable petitions as would be required in 25 Pa. Code 86.124(c) and 86.125(a) instead of EQB as formerly required.

The Federal regulations at 30 CFR 764.17 require the regulatory authority to conduct hearings. In Pennsylvania, the regulatory authority is PADEP. As a result, Pennsylvania's change does not make it less effective than the corresponding Federal regulations.

11. The PHMC objects to coal exploration within areas designated unsuitable for mining at 25 Pa. Code 86.129(b) and believes it would directly impact cultural resources. The Federal regulations at 30 CFR 762.15 allow coal exploration operations within areas designated unsuitable for mining if such operations are conducted in accordance with the regulatory program. Pennsylvania's regulations at 25 Pa. Code 86.129 and 86.133 require that the exploration will be conducted to preserve and protect the applicable values and uses of the area. Therefore, there will be no impact to such cultural resources. We find that the proposed revisions are no less effective than 30 CFR 762.15.

V. OSM's Decision

Based on the above findings, we approve, with the exceptions noted below, the amendment Pennsylvania sent us on November 22, 1999, that was clarified by letter dated February 13, 2002.

We do not approve 25 Pa. Code 86.124(f) and 25 Pa. Code 86.125(j) to the extent that these sections would allow Pennsylvania more time to complete a final written decision on a lands unsuitable for surface mining activities petition than is allowed by the provisions of the Federal regulations at 30 CFR 764.19(b).

To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly,