

material damage to, or reduce the reasonably foreseeable uses of the structures or features.

(4) A description of the anticipated effects of planned subsidence, if any.

(5) A description of the measures to be taken to correct any subsidence-related material damage to the surface land.

(6) A description of the measures to be taken to prevent irreparable damage to the structures enumerated in 25 Pa. Code 89.142a(f)(1)(iii)–(v), if the structure owner does not consent to the damage.

(7) A description of the monitoring, if any, the operator will perform to determine the occurrence and extent of subsidence so that, when appropriate, other measures can be taken to prevent or reduce or correct damage in accordance with 89.142a(e) and (f).

(8) A description of the measures to be taken to maximize mine stability and maintain the value and reasonably foreseeable use of the surface land.

(9) For EAct structures other than noncommercial buildings protected under 89.142a(c), a description of the methods to be employed in areas of planned subsidence to minimize damage or otherwise comply with the requirements of 89.142a(d)(1)(i).

(10) For EAct structures other than noncommercial buildings protected under 89.142a(c), a description of the subsidence control measures to be taken in accordance with 89.142a(d)(1)(ii) to prevent subsidence and subsidence-related damage in areas where underground mining operations are not projected to result in planned subsidence.

(Paragraphs 11 and 12 will be renumbered.)

89.142a. Subsidence control: performance standards.

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(d) Protection of certain EAct structures and agricultural structures.

(1) For EAct structures other than noncommercial buildings protected under subsection (c):

(i) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to the structure, except where one of the following applies:

(A) The structure owner has consented, in writing, to allow material damage.

(B) The costs of such measures would exceed the anticipated cost of repairs and the anticipated damage will not constitute a threat to health or safety.

(ii) If an operator employs mining technology that does not result in planned subsidence in a predictable and controlled manner, the operator shall adopt measures consistent with known technology to prevent subsidence and subsidence-related damage to the extent technologically and economically feasible to the structure. Measures may include, but are not limited to:

(A) Backstowing or backfilling of voids.

(B) Leaving support pillars of coal.

(C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place.

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(E) Other measures approved by the Department.

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(3) Nothing in paragraphs (1) or (2) shall be construed to prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

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Regulation at 30 CFR 938.16(hhhhh).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.141(d)(6) to require subsidence control plans to include descriptions of the measures to be taken to minimize material damage to dwellings and related structures and noncommercial buildings when mining methods are projected to result in planned subsidence.

Discussion: Section 25 Pa. Code 89.141(d)(6) requires a description of the measures to be taken to prevent irreparable damage to structures enumerated in 25 Pa. Code 89.142a(f)(1)(iii)–(v) (i.e., occupied residential dwellings and related structures and certain agricultural structures). In the December 27, 2001, final rule, OSM found that while this regulation addresses situations where irreparable damage is predicted, it does not address situations where EAct structures may suffer material damage. OSM noted that 30 CFR 784.20(b)(5) and (7) require descriptions of measures to prevent or minimize material damage to EAct structures depending on the type of proposed mining. OSM further stated that the required protection is not provided in other parts of Pennsylvania law or regulation.

To address this difference, OSM directed PADEP to amend 25 Pa. Code 89.141(d)(6) to incorporate the Federal requirements in 30 CFR 784.20(b)(5) and (7). Paragraph (b)(5) requires a description of the measures to be taken to prevent subsidence damage to EAct structures in situations where mining will not result in planned subsidence. Paragraph (b)(7) requires, with certain exceptions, a description of the measures to be taken to minimize damage to EAct structures in situations where mining is projected to result in planned subsidence.

In response to OSM's concern, PADEP has proposed extensive amendments to 25 Pa. Code 89.141(d) and 25 Pa. Code 89.142a(d). These changes, which are also discussed under 30 CFR 938.16(ggggg), require subsidence control plans to include descriptions of the measures to be taken when planned subsidence is projected to result in

material damage to an EAct structure. The measures, which are described in 25 Pa. Code 89.142a(d), include taking measures to minimize damage to the extent technologically and economically feasible; obtaining the landowner's consent to allow damage; and evaluating the need for damage minimization measures based on cost, health and safety considerations.

PADEP's Proposed Resolution: In this submission, PADEP is proposing amendments to 25 Pa. Code 89.141(d) and 89.142a(d) that will make Pennsylvania's requirements no less effective than Federal requirements in regard to the protection of EAct structures. These amendments are presented in the proposed resolution to 30 CFR 938.16(ggggg). PADEP maintains that the proposed amendments will satisfy the required amendment at 30 CFR 938.16(hhhhh).

Regulation at 30 CFR 938.16(iiiiii).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(c)(3) (regarding public buildings and facilities, churches, schools, hospitals, impoundments with a storage capacities of 20 acre-feet or more, bodies of water with volumes of 20 acre-feet or more, and aquifers or bodies of water that serve as significant sources for public water supply systems) to make it as effective as 30 CFR 817.121(e), which imposes on the regulatory authority the obligation to require permittees to modify subsidence control plans to ensure the prevention of further material damage in the cases where the initial plan or operator's actions fail and provides the authority to suspend mining until such a plan is approved.

Discussion: Subsection 89.142a(c)(3) states that if the measures implemented by the operator cause material damage to or reduce the reasonably foreseeable use of structures or features listed in paragraph (1), PADEP will impose additional measures to minimize the potential for these effects. In the December 27, 2001, final rule, OSM indicated that 30 CFR 817.121(e) imposes on the regulatory authority the obligation to require a permittee to modify its subsidence control plan to ensure the prevention of further material damage in the cases where the initial plan or the operator's actions fail. In addition, 30 CFR 817.121(e) provides the authority to suspend mining until such a plan is approved. Pennsylvania did not establish that the regulations at 25 Pa. Code 89.142a(c)(3) allow it the discretion to suspend mining until the operator's subsidence control plan ensures the prevention of further