

material damage. OSM concluded by indicating that Pennsylvania's regulation merely requires additional measures to minimize the effects, but does not give Pennsylvania the option to stop the mining until it reviews the additional measures and determines that the measures will minimize the effects.

In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(c)(3) to incorporate the provisions requested by OSM. PADEP asserts that these changes will make Pennsylvania's program as effective as the Federal program in dealing with situations where approved measures fail to prevent material damage or reduce the reasonably foreseeable use of 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. PADEP also notes that the structures or features addressed by this regulation are the same as those addressed by 30 CFR 817.121(d) and (e). PADEP maintains that no changes to the BMSLCA are necessary to accommodate this regulation change.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(c)(3) in the following manner.

89.142a. Subsidence control: performance standards.

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(c) Restrictions on underground mining.

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(3) If the measures implemented by the operator cause material damage or reduce the reasonably foreseeable use of the structures or features listed in paragraph (1), the Department may suspend mining under or adjacent to these structures or features until the subsidence control plan is modified to ensure prevention of further material damage to these facilities or features.

Regulation at 30 CFR 938.16(jjjjj).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(d) to ensure the prevention of material damage to occupied residential dwellings and community or institutional buildings (i.e., EPAct structures) in areas where mining is not projected to result in planned subsidence.

Discussion: Subsection 89.142a(d) provides that if a proposed mining technique or extraction ratio will result in irreparable damage to certain structures (dwellings, barns, silos, and permanently affixed agricultural structures greater than 500 sq. ft. in area), the operator may not use the

technique or extraction ratio unless the building owner, prior to mining, consents to the mining or the operator takes measures to minimize or reduce impacts resulting from subsidence. In the December 27, 2001, final rule, OSM found that the Federal regulations do not provide for an irreparable damage standard and while the provisions of 25 Pa. Code 89.142a(d) are no less effective than the Federal regulations regarding structures in danger of being irreparably damaged, the requirements are less effective in regard to structures that may be materially damaged because it provides no protection for those structures.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.142a(d) to require the prevention of material damage in cases where operators use mining methods that are not projected to result in planned subsidence. PADEP asserts that this will make Pennsylvania's regulations no less effective than the Federal regulations in regard to the protection of EPAct structures.

PADEP's Proposed Resolution: In this submission, PADEP is proposing amendments to 25 Pa. Code 89.142a(d) that it maintains will address the requirement in 30 CFR 938.16(jjjjj). These changes are described in the response to 30 CFR 938.16(ggggg).

Regulation at 30 CFR 938.16(kkkkk).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(f)(1) to secure prompt repair or compensation to landowners. OSM made a similar requirement at 938.16(tttt) in regard to section 5.4 of the BMSLCA.

Discussion: See discussion under 30 CFR 938.16(tttt) in regard to section 5.4 of the BMSLCA.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(f)(1) as shown under 30 CFR 938.16(tttt). PADEP maintains that these proposed changes will also satisfy the requirement in 30 CFR 938.16(kkkkk).

Regulation at 30 CFR 938.16(lllll).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend section 25 Pa. Code 89.142a(f)(1)(iii) to remove the phrase, "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."

Discussion: This section is similar to section 5.4(a)(3) of the BMSLCA. See discussion under 30 CFR 938.16(uuuu).

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(f)(1)(iii) as shown in the proposed resolution to 30 CFR 938.16(uuuu). PADEP asserts that this will also satisfy the required amendment at 30 CFR 938.16(lllll). In order for this change to become effective, PADEP contends that OSM must supersede the language in section 5.4(a)(3) of BMSLCA which serves as a basis for this qualification. The rule proposing to supersede this portion of BMSLCA is located elsewhere in this **Federal Register** issue.

Regulation at 30 CFR 938.16(mmmmm).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(g)(1) to require that all underground mining activities be conducted in a manner consistent with 30 CFR 817.180.

Discussion: Section 89.142a(g)(1) protects utilities from adverse effects caused by "underground mining." In the December 27, 2001, final rule, OSM observed that "underground mining" is defined in Pennsylvania's regulations as the extraction of coal in an underground mine. The Federal rule at 30 CFR 817.180 requires that all underground mining activities, not just underground mining, must be planned and conducted in a manner that minimizes damage, destruction or disruption in services provided by utilities. In the December 27, 2001, final rule, OSM found that the Federal rule is more inclusive of the activities that must be conducted in a manner that minimizes damage, destruction or disruption in services.

In response to the required amendment, PADEP is proposing to revise 25 Pa. Code 89.142a(g)(1) to replace the term "underground mining" with "underground mining operations." PADEP maintains that this change, in combination with the protections already provided under existing 25 Pa. Code 89.67 (relating to support facilities), defines a scope of coverage equivalent to that in 30 CFR 817.180.

The proposal to replace the term "underground mining" with "underground mining operations" will extend the scope of 25 Pa. Code 89.142a(g)(1) to include effects arising from any activities that take place in the subsurface parts of an underground mine. The term "underground mining operations," which is defined in 25 Pa. Code 89.5, includes underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting. The term effectively