

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938**

[SATS No. PA-159-FOR; Docket No. OSM-2010-0017; S1D1S SS08011000 SX064A000 156S180110; S2D2S SS08011000 SX064A000 15XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is removing a required amendment to the Pennsylvania regulatory program (the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). OSMRE has determined that the information submitted by Pennsylvania satisfies a previously required amendment regarding bonding in Pennsylvania. Therefore, OSMRE is removing the previously required amendment from the Pennsylvania program as Pennsylvania has demonstrated that its program is being administered in a manner consistent with SMCRA and the corresponding Federal regulations.

DATES: Effective September 17, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Owens, Chief, Pittsburgh Field Division; Telephone: (412) 937-2827, Email: bowens@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Submission
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I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program, effective July 31,

1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Submission

OSMRE published a final rule in the August 10, 2010, **Federal Register** (75 FR 48526), herein referred to as the 2010 final rule, requiring Pennsylvania "to ensure that its program provides suitable, enforceable funding mechanisms that are sufficient to guarantee coverage of the full cost of land reclamation at all sites originally permitted and bonded under the [alternative bonding system (ABS)]." This was codified in the Federal regulations at 30 CFR 938.16(h). OSMRE approved several changes in the 2010 final rule. However, OSMRE concluded that two sites, originally permitted and bonded under the ABS, held insufficient bonds after the conversion to a full cost bonding system to guarantee that the land would be reclaimed in the event forfeiture occurred.

The two sites at issue are anthracite operations that were permitted by Lehigh Coal & Navigation (LCN) and Coal Contractors Inc. (CCI). Before the 2010 final rule was published, Pennsylvania had indicated that these two sites were bonded in an amount that was less than the full cost needed to complete reclamation in the event that forfeiture occurred. Although Pennsylvania contended that these sites were not reclamation liabilities, as the bond deficiency at both sites was being addressed through other means, OSMRE determined that Pennsylvania's approach to resolving this issue did not provide the same level of financial assurance as that guaranteed by posting a full cost bond. As a result, OSMRE revised 30 CFR 938.16(h), and required that Pennsylvania demonstrate that sufficient funds existed to ensure the land reclamation would be completed at the LCN and CCI sites.

In response to OSMRE's 2010 final rule, Pennsylvania submitted information which it believed demonstrated that it is able to guarantee sufficient funds to cover the full reclamation costs at the LCN and CCI sites. After providing three submissions, Pennsylvania requests the removal of the required amendment. Each submission is discussed below.

Submission No. 1: By letter dated October 1, 2010 (Administrative Record No. PA 802.72), Pennsylvania sent us a response as required by 30 CFR 938.16(h). We announced receipt of this submission in the February 7, 2011, **Federal Register** (76 FR 6587). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the submission. OSMRE received comments, but did not hold a public hearing or meeting because neither was requested. The public comment period ended on March 9, 2011.

In the first submission, Pennsylvania provided information that it believed demonstrated that available funds were more than sufficient to guarantee coverage of the full cost of land reclamation at the two sites. The information submitted to support Pennsylvania's contention included a demonstration of available funding, the Coal Contractors 2009 Annual Bond Review, LCN's annual bond review, updated estimates for the ABS bond forfeiture discharge treatment sites, and updated land reclamation estimates. Based on this information, Pennsylvania requested the removal of the previously required amendment.

At the time of this submission, the following conditions existed:

LCN Land Reclamation Estimate:

\$11,230,429

Current Bonds Available: \$7,759,000

Additional Reclamation Funding

Needed: \$3,471,429

CCI Land Reclamation Estimate:

\$2,863,982

Current Bonds Available: \$804,625

Additional Reclamation Funding

Needed: \$2,059,357

The submission indicated a balance of \$19,496,955 in the Surface Mining Conservation and Reclamation Fund (SMCR Fund) that was available for ABS land and discharge treatment for ABS legacy sites. Projected expenses at the time for ABS land reclamation and discharge treatment (design and construction) was \$12,877,636, leaving a balance of \$6,619,319 available to address the reclamation funding needs of \$5,530,786 for the LCN and CCI sites, if forfeited.

Pennsylvania also stated that in the unlikely event that both of these sites would require expenditure of funds for land reclamation, then at least some of the cost for the design and construction of the ABS bond forfeiture discharge treatment facilities would be paid for using the Reclamation Fee Operation and Maintenance account (RFO&M account). There was approximately \$1

million of immediately available funds in this account that could be used for this purpose exclusively. Pennsylvania believed that this demonstration of available funding warranted removal of the required amendment.

Submission No. 2: On June 13, 2011 (Administrative Record No. PA 802.80), we received additional information from Pennsylvania regarding recent developments with the LCN site. The permit had been transferred to BET Associates IV, LLC (BET), resulting in the posting of a full cost bond in an amount to cover the land reclamation obligation. We announced this submission in the October 17, 2011, **Federal Register** (76 FR 64048). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the submission. OSMRE received comments, but did not hold a public hearing or meeting because neither was requested. The public comment period ended on November 1, 2011.

Included in the second submission was the mining permit, Part C (Authorization to Mine), and the calculation sheet documenting the bond amount. At the time of this submission, the following conditions existed:

LCN Land Reclamation Estimate:

\$10,523,000

Current Bonds Available: \$10,523,000

Additional Reclamation Funding

Needed: \$0

Submission No. 3: On November 6, 2012, we received additional information from Pennsylvania regarding recent developments involving the CCI permit bonding status (Administrative Record No. PA 802.85). We announced receipt of this submission in the February 19, 2013, **Federal Register** (78 FR 11617). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the submission. OSMRE received comments, but did not hold a public hearing or meeting because neither was requested. The public comment period ended on March 6, 2013.

The third submission included a letter to the operator regarding the annual bond review, along with the supporting documentation supporting the review, which included the annual bond calculation summary.

At the time of this submission, the following conditions existed:

CCI Land Reclamation Estimate:

\$403,691

Current Bonds Available: \$804,625

Additional Reclamation Funding

Needed: \$0

After three submissions, Pennsylvania believed it had provided sufficient information as required by OSMRE to satisfy the 30 CFR 938.16(h) requirements. As a result, Pennsylvania requested that OSMRE remove the previously required amendment.

III. OSMRE's Findings

Discussed below are our findings concerning this request to remove a previously required amendment to the Pennsylvania program pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. After reviewing the information submitted, OSMRE is removing the previously required amendment that was codified at 30 CFR 938.16(h).

OSMRE finds that Pennsylvania demonstrated through its bonding calculations and reclamation estimates that sufficient funds are available to guarantee coverage of the reclamation needs at the LCN and CCI sites, in satisfaction of the previously required amendment. Therefore, we are approving this request to remove paragraph (h) of 30 CFR 938.16.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on each of the three submissions. No requests for public meetings were received. On March 5, 2013, we received comments from a group of citizen organizations collectively known as "the Federation," which represents six organizations: (1) Citizens for Pennsylvania's Future (PennFUTURE), (2) Pennsylvania Federation of Sportsmen's Clubs, Inc., (3) Sierra Club, (4) Pennsylvania Council of Trout Unlimited, (5) Center for Coalfield Justice, and (6) Mountain Watershed Association.

PennFUTURE serves as legal counsel for these organizations with respect to alleged inadequacies of Pennsylvania's bonding program and continues to serve in that capacity by responding to related matters, such as this program amendment. PennFUTURE provided comments on Pennsylvania's initial submission, which we responded to in the 2010 final rule (Administrative Record No. PA 802.43).

In addition to the March 5, 2013, comments (Administrative Record No. PA 802.88) on the latest submission from Pennsylvania, PennFUTURE also submitted comments on March 9, 2011 (Administrative Record No. PA 802.79), regarding the initial October 1, 2010, submission and on November 1, 2011 (Administrative Record No. PA 802.83),

regarding Pennsylvania's first supplemental submission dated June 13, 2011 (Administrative Record No. PA 802.80), concerning the LCN site.

PennFUTURE originally contended that the program amendment submission was deficient for various reasons. As noted in our findings, however, subsequent events occurred after the original submission, which affected the financial solvency and prior bond deficiency at the two sites. Since the comments submitted by PennFUTURE have largely restated its earlier comments, OSMRE is addressing those comments still applicable. We are addressing the March 5, 2013, comments first and they are as follows:

A. The CCI Site

PennFUTURE submitted previous comments regarding the adequacy of this site. However, subsequent to the receipt of those comments, PennFUTURE now agrees that, as a result of the reclamation work performed at the CCI site since Submission No. 1, the site finally appears to have an enforceable, full cost reclamation guarantee in place considering the current bond amount and the estimated cost to complete reclamation of the site. Since the most recent bond calculation summary submitted (revised summary for 2011) was prepared, PennFUTURE recommends that OSMRE review CCI's annual bond calculation summary for 2012 to confirm that the site is adequately bonded.

OSMRE's Response: On August 20, 2013, Pennsylvania advised OSMRE that the CCI site had been backfilled and graded, with five acres to be seeded in the fall of 2013. There has been no corresponding bond reduction. The amount remains \$804,625, which is sufficient to complete reclamation (Administrative Record No. PA 802.65).

B. The LCN Site/Perpetual Post-Mining Discharge and Land Reclamation Bond

According to PennFUTURE, Pennsylvania has not demonstrated that an enforceable, full cost land reclamation guarantee exists for the LCN site because there is no fully funded guarantee of perpetual treatment for the LCN site's post-mining discharge.

PennFUTURE asserts that the perpetual post-mining discharge from the LCN site puts the adequacy of the treatment trust for that discharge directly at issue in this program amendment proceeding. As a result, PennFUTURE contends that OSMRE must decide a number of issues concerning Pennsylvania's implementation of treatment trusts raised in PennFUTURE's February 27,

2009, comments on Pennsylvania's August 1, 2008, proposed ABS program amendment (Administrative Record No. PA 802.60).

PennFUTURE states that \$8,423,000 is needed for land reclamation only and does not apply to discharges. The perpetual post-mining discharge from the LCN site puts the adequacy of the treatment trust for that discharge directly at issue in this proceeding. In order to demonstrate that the surety reclamation bond for the LCN site fully guarantees all land reclamation at the site and will not be used to address mine drainage treatment liability, Pennsylvania must demonstrate that the treatment trust for the LCN site is both adequate in amount and fully funded, which it has failed to do as explained below.

PennFUTURE states that its November 1, 2011, comments on Pennsylvania's first supplemental program amendment submission included the May 5, 2011, Post-Mining Treatment Trust Consent Order and Agreement between Pennsylvania and BET (BET Trust CO&A), which established a payment schedule for funding a perpetual treatment trust.

PennFUTURE states that its comments showed that Pennsylvania had failed to demonstrate that the surety bond posted by BET fully guarantees all outstanding land reclamation at the LCN site because it had failed to demonstrate that an adequate and fully funded trust is in place that guarantees perpetual treatment of the post-mining discharge from the LCN site. PennFUTURE's earlier comment letter concluded:

"Under Pennsylvania's approved regulatory program, surety bonds cover all varieties of potential reclamation liabilities at a permitted coal mine. Thus, until a fully funded treatment trust is in place that fully guarantees perpetual treatment of the post-mining discharge from the LCN site, the \$8,423,000 surety bond posted by BET is stretched too thin, covering an estimated \$8,423,000 in land reclamation liability plus perhaps an equivalent amount in mine drainage treatment liability. As a result, the surety bond currently does not provide fully, dollar-for-dollar coverage of the potential land reclamation liabilities at the LCN site. [Pennsylvania] therefore has not carried its burden of demonstrating that the combination of BET's surety bond and the transferred [Land Reclamation Financial Guarantees (LRFG)] 'are sufficient to guarantee coverage of the full cost of land reclamation' at the LCN site."

PennFUTURE states that for any primacy mine with a post-mining

discharge, like the LCN site, the conventional reclamation bond covers both the outstanding land reclamation obligation and the outstanding discharge treatment obligation, unless and until the mine operator posts a treatment trust or other financial guarantee that is both: (1) Adequate in amount to provide perpetual treatment and (2) fully funded. It follows that in order to find that the surety bond posted by BET for the LCN site is unencumbered by any potential mine drainage treatment liability, and therefore, is adequate to fully guarantee the outstanding land reclamation liability, OSMRE must find that the treatment trust for the LCN site is both (1) adequate in amount to provide perpetual treatment and (2) fully funded. PennFUTURE goes on to comment about the calculation and assumptions used to estimate the valuing of trust assets to derive a treatment trust amount that results in financial solvency. These issues were raised in detail in their 2009 comments on Pennsylvania's initial submission. PennFUTURE further asserts that the current program amendment presents, concretely for one specific mine, the issues OSMRE declined to address in the abstract, for a range of potential future scenarios, in ruling on the ABS program amendment in the 2010 final rule.

PennFUTURE references several developments relevant to the adequacy and funding status of the LCN site treatment trust since the submission of their last comment letter on November 1, 2011. The developments include the LCN site's pollutant discharge limits and PennFUTURE's submission of comment letters detailing the reasons why the pollutant loads and effluent limitations Pennsylvania proposed for relocating discharge from the LCN site are excessive. PennFUTURE further states that correcting those errors and reducing the allowable pollutant loads and applicable effluent limitations will increase the estimated costs of treating the discharge from the LCN site and thus, the required amount of the treatment trust. Additionally, PennFUTURE also references the completion of a 2012 OSMRE report documenting a review of the Al Hamilton Treatment Trust Fund. While this report is not directly related to the LCN site, PennFUTURE provides it as an example of perceived trust inadequacies. This report documents that when the trust was established in 2003, roughly half of its assets were coal reserves that now appear to be valueless, leaving the primary portion of

the trust at only a fraction of the value required to provide adequate and perpetual treatment of the dozens of mine discharges it covers. In reference to OSMRE's Al Hamilton Trust Fund Report attached in its letter dated March 5, 2013, PennFUTURE stated that the fractional funding of the trust has forced Pennsylvania "to triage and prioritize the systems needing attention, to spread out the expenditures to reduce the financial stress," leaving some discharges wholly or partially untreated and others lacking adequate treatment.

PennFUTURE states that the harsh lessons provided by this example are that something appearing to have great value today may, in fact, be worthless when needed in the future, and that for a financial mechanism that is required to provide a rock-solid, perpetual guarantee, only money in the bank qualifies as money in the bank. In light of this concern, no discharge treatment trust should be considered fully funded—that is, to provide the iron-clad reclamation guarantee required by law—unless the primary portion of the trust consists of cash or assets that are easily and immediately convertible to cash.

PennFUTURE states that when Pennsylvania enters into a CO&A with a mine operator establishing a payment schedule for funding a treatment trust, it typically does not immediately consider the trust fully funded based on the operator's documented payment obligation. To the contrary, it is only when the mine operator makes the final payment and the trustee has the cash in hand that Pennsylvania changes the designation from "payment plan" to "fully funded".

According to PennFUTURE, the inability to market the Al Hamilton Treatment Trust's coal reserves shows that any trust asset that is not easily and immediately convertible to cash is something like a payment plan—it may or may not deliver the expected value when the time comes. Just as a payment plan trust is not considered fully funded until the last payment is delivered, PennFUTURE states that any trust containing an asset like coal reserves may not be considered fully funded until the asset actually delivers its estimated value by being converted to cash.

OSMRE's Response: Pennsylvania's regulations require adjustment of the reclamation fee, which is deposited into the RFO&M account, to cover any increased costs of water treatment for all ABS forfeited sites in any given year. Pennsylvania's annual adjustments to the reclamation fee amount will be evaluated by OSMRE through its oversight authority. In short, the

regulations create the mandate to fully fund discharge treatment costs for all existing and potential ABS legacy sites in perpetuity. Therefore, should the LCN site-specific bond be forfeited, the entire amount of that bond will be used for land reclamation and treatment costs and will be covered by the treatment trust and supplemented, if necessary, by the adjustable reclamation fee. As noted above, sufficient funds exist in the site-specific bond to cover land reclamation costs. In an email dated June 18, 2013, Pennsylvania, at our request, provided the 2012 annual bond calculation, which indicated a reclamation obligation of \$10,448,389 as well as a surplus of \$74,611 at the LCN site (Administrative Record No. PA 802.89). Pennsylvania has demonstrated that its program provides suitable, enforceable funding mechanisms sufficient to guarantee the full cost of land reclamation at all sites originally permitted and bonded under the ABS, in accordance with 30 CFR 938.16(h). Therefore, the previously required amendment can be removed.

C. The LCN Site's Trust Fund Adequacy

PennFUTURE asserts that OSMRE cannot find that the land reclamation at the LCN site is fully guaranteed unless it also finds that perpetual treatment of the mine drainage discharge from the LCN site is fully guaranteed.

PennFUTURE states that in addition to being fully funded, a treatment trust must be adequate in amount to provide the firm guarantee of perpetual treatment required by law. Thus, in order to find that the treatment of the discharge from the LCN site is fully guaranteed (which, as explained above, is a prerequisite to finding that the reclamation of the land at the LCN site is fully guaranteed), OSMRE must determine whether Pennsylvania, in calculating the amount of the BET/LCN site trust, applied assumptions and methods that yield a dollar figure that is sufficient to provide the required firm guarantee of perpetual treatment.

PennFUTURE claims that the first complication is that Pennsylvania cannot, at this point, accurately project the treatment costs because it has yet to set the effluent limit targets that such treatment will be required to meet, much less to approve the installation of the new treatment system(s) that will be designed to meet them. PennFUTURE additionally asserts that the BET Trust CO&A estimated the present discounted value for perpetual operation and maintenance of the Mine's "New Treatment System(s)" at \$13.8 million a year before Pennsylvania produced a draft of the National Pollutant Discharge

Elimination System (NPDES) permit revision that would govern the new system's discharge. However, according to PennFUTURE, the effluent limitations in the final revision of the NPDES permit must be more stringent than those proposed in Pennsylvania's draft of the permit.

The second complication, according to PennFUTURE, is that the requirement that the amount of the trust be sufficient to provide a firm guarantee of perpetual treatment forces OSMRE to address all of the issues concerning the inadequacy of Pennsylvania treatment trusts raised in our coalition's February 27, 2009, comments on the 2008 ABS program amendment. PennFUTURE claims that OSMRE declined to address those issues in the abstract across a multitude of potential scenarios in its 2010 final rule on the ABS program amendment. 75 FR 48526. Now, however, the abstract has been made concrete and the programmatic concern has been reduced to a single, specific case. In short, PennFUTURE believes that the issues are squarely and concretely presented and OSMRE must decide them in order to rule on the adequacy of the reclamation guarantee for the LCN site.

PennFUTURE incorporates by reference all earlier comments concerning the deficiencies of Pennsylvania's trust fund calculations, along with the many exhibits supporting those comments. Issues addressed in those earlier comments included trust fund volatility, trust investment portfolio composition, treatment trust portfolio rates of return, and the 75-year recapitalization cost calculation.

OSMRE's Response: As we addressed in our response above, Pennsylvania's regulations require adjustment of the reclamation fee to fully fund discharge treatment costs for all ABS forfeited sites. In the event that the LCN site-specific bond is forfeited, the entire bond amount will be used for land reclamation and treatment costs will be covered by the treatment trust and supplemented by the adjustable reclamation fee, if necessary. In an email dated June 18, 2013, Pennsylvania, at our request, indicated that the 2012 bond calculation amount for the LCN site is \$10,448,389. Further, documentation was provided that indicated a surplus of \$74,611 at the site (Administrative Record No. PA 802.89). Thus, Pennsylvania has demonstrated that its program provides suitable, enforceable funding mechanisms sufficient to guarantee the full cost of land reclamation at all sites originally permitted and bonded under the ABS, in accordance with 30 CFR 938.16(h).

Therefore, the previously required amendment can be removed.

As we addressed in our findings above, Pennsylvania's submissions satisfy the requirements set forth in the previously required amendment and demonstrate the existence of sufficient funds to guarantee coverage of the full cost of land reclamation at both the LCN and CCI sites. Therefore, OSMRE is removing the previously required amendment, at subsection (h) of 30 CFR 938.16.

Federal Agency Comments

On October 5, 2010, under the Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 802.73). We received a response of no comment from the Mine Safety and Health Administration on October 18, 2010 (Administrative Record No. PA 802.74). No other comments were received, with the exception noted below.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, we received comments from EPA on November 12, 2010, regarding the submission (Administrative Record No. PA 802.76). EPA concluded that the submission was limited to land reclamation. EPA, however, mentioned that well-funded bonding programs are necessary to provide for post-mining treatment, prevent perpetual post-mining drainage problems, as well as protect the hydrologic balance and ensure compliance with water quality standards. In response to EPA's comments, OSMRE agrees that an adequately funded bonding program is crucial to prevent post-mining pollutive discharges.

V. OSMRE's Decision

Based on the above findings, we are removing the previously required amendment at 30 CFR 938.16(h). To implement this decision, we are amending the Federal regulations, at 30

CFR part 938, that 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 rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each program is drafted and promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in

accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(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 certifies 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 counterpart 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. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 2015.

Thomas D. Shope,
Regional Director, Appalachian Region.

EDITORIAL NOTE: This document was received for publication by the Office of **Federal Register** on September 10, 2015.

For the reasons set out in the preamble, 30 CFR part 938 is amended as follows:

PART 938—PENNSYLVANIA

■ 1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (h).

[FR Doc. 2015-23118 Filed 9-16-15; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 285**

RIN 1530-AA02

Offset of Tax Refund Payments To Collect Certain Debts Owed to States

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule, published in the **Federal Register** on January 28, 2011, concerning the collection of delinquent State unemployment compensation debts through the offset of overpayments of Federal taxes.

DATES: This rule is effective September 17, 2015.

ADDRESSES: In accordance with the U.S. government's eRulemaking Initiative, the Bureau of the Fiscal Service publishes rulemaking information on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Thomas Kobielski, Manager, Treasury Offset Program Debt Policy Branch, Treasury Offset Program Division, Debt Collection Program Management Directorate, Debt Management Services, Bureau of the Fiscal Service, at (202) 874-6810, or Michelle M. Cordeiro, Attorney, Office of Chief Counsel, Bureau of the Fiscal Service, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**I. Background**

This rule implements the authority added by the SSI Extension for Elderly and Disabled Refugees Act of 2008 (“2008 Act”), as amended by the Claims Resolution Act of 2010 (“2010 Act”), to offset overpayments of Federal taxes (referred to as “tax refund offset”) to collect delinquent state unemployment compensation debts. The Department of the Treasury (“Treasury”) has incorporated the procedures necessary to collect state unemployment compensation debts as part of the

Treasury Offset Program, a centralized offset program operated by Treasury’s Bureau of the Fiscal Service (“Fiscal Service”).

On January 28, 2011, Fiscal Service (then, the Financial Management Service) published an interim rule with request for comments at 76 FR 5070, implementing this new authority. Specifically, this rule amended Fiscal Service regulations to include unemployment compensation debts among the types of state debts that may be collected by tax refund offset.

II. Summary of Comments Received and Treasury’s Responses

Treasury sought comments on all aspects of the proposed rule. Treasury received comments from one private company that provides worldwide tax services. The following is a discussion of the substantive issues raised in the comments.

1. Notice

The commenter suggested that the rule provide guidelines to the states regarding how to notify debtor populations who may be affected by this rule. While this comment is outside the scope of this rule, Fiscal Service notes that this rule requires debtor-specific pre-offset notification (see 31 CFR 285.8(c)(3)(i)). The commenter also suggested that Fiscal Service mandate that states provide a pre-offset notice by certified mail, return receipt requested. In the 2010 Act, Congress explicitly removed this requirement in the case of unemployment compensation debt. Fiscal Service is unaware of any evidence that certified mail is more likely to reach the debtor than is regular first class mail, and notes that the cost of sending a notice by certified mail, return receipt requested, is high relative to sending a notice by regular first class mail. Therefore, Fiscal Service has not adopted this suggestion. As required by statute, however, notice must be sent by certified mail, return receipt requested prior to pursuing Federal tax refund offset to collect delinquent state income tax obligations.

The commenter also suggested that Fiscal Service mandate that the notice to the debtor include certain details about the debt. Fiscal Service notes that, prior to submitting a debt to the Treasury Offset Program for tax refund offset purposes, a state is required to certify to Fiscal Service that it has provided the debtor with sufficient due process, including identification of the debt the state seeks to collect by offset. The information that must be provided may differ with the specific circumstances, and states may provide notice beyond

what is specifically required by statute and regulation. Because identification of the debt is already required, Fiscal Service has not incorporated this suggestion.

2. Reasonable Efforts

The commenter suggested that this rule provide specific actions that states should take and state what documentation they should retain to demonstrate that they have made reasonable efforts to collect a debt prior to pursuing Federal tax refund offset. The rule provides detail on what a reasonable effort includes—namely, making written demand on the debtor for payment and following state law and procedure. In addition, the rule was designed to provide flexibility because what constitutes a reasonable effort may differ based on the specific circumstances. Therefore, Fiscal Service believes that providing specific actions that states should take is unnecessary and not practicable and has not adopted this suggestion.

3. Central Repository for Information

The commenter suggested that debtors be able to obtain information through a centralized location within the Treasury Offset Program Web site and through an automated telephone system on why their payment was offset and on state appeals processes. While this suggestion is outside the scope of this rule, Fiscal Service notes that debtors currently may access certain offset information through an automated telephone system. Fiscal Service further notes that it is exploring other self-service options that would permit debtors to obtain information about their own debts.

4. Other Concerns

The commenter suggested that the description of the required appeal process contain more detail. Fiscal Service is not aware of any additional detail that needs to be included and, therefore, has not made any changes to the rule based on this suggestion.

The commenter also suggested that Fiscal Service consider extending the period of dispute to 90 days because debtors are unlikely to have retained records for long periods of time. Fiscal Service notes that several other delinquent debt collection tools provide a due process period of 60 days or fewer, including the offset of Federal nontax payments to collect Federal nontax debts (31 CFR 285.5(d)(6)(ii)(A)); the offset of Federal nontax payments to collect state debts (31 CFR 285.6(e)(2)); the offset of Federal tax payments to collect Federal nontax debts (31 CFR 285.2(d)(1)(ii)(B)); and the