(8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section''; and

5. In paragraph (d)(3), by inserting the word ''solely'' after the word ''waiver'', and by inserting the following at the end of said paragraph: ''However, an alien who is a graduate of a medical school pursuing a program in medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section''; and

6. By redesignating paragraphs (e), (f), and (g) as (f), (g), and (h), respectively; and

7. By inserting a new paragraph (e) as follows:

§ 514.44 Two-year home-country physical presence requirement.

* * * * *

(e) *Requests for waiver from a State Department of Public Health, or its equivalent, on the basis of Public Law 103–416.*

(1) Pursuant to Public Law 103–416, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, a request for a waiver of the two-year home-country physical presence requirement may be made by a State Department of Public Health, or its equivalent. Such waiver shall be subject to the requirements of section 214(k) of the Immigration and Nationality Act (8 U.S.C. 1184) and this § 514.44.

(2) With respect to such waiver under Public Law 103–416, the Director of the United States Information Agency is to be furnished with a statement in writing that the country to which such alien is required to return has no objection to such waiver. The no objection statement shall be furnished to the Director in the manner and form set forth in paragraph (d) of this section and, additionally, shall bear a notation that it is being furnished pursuant to Public Law 103–416.

(3) The State Department of Public Health, or equivalent agency, shall include in the waiver application the following:

(A) A completed ''Data Sheet.'' Copies of blank data sheets may be obtained from the Agency's Exchange Visitor Program office.

(B) A letter from the Director of the designated State Department of Public Health, or its equivalent, which identifies the foreign medical graduate by name, country of nationality or last residence, and date of birth, and states that it is in the public interest that a waiver of the two-year home residence requirement be granted;

(C) An employment contract between the foreign medical graduate and the health care facility named in the waiver application, to include the name and address of the health care facility, and the specific geographical area or areas in which the foreign medical graduate will practice medicine. The employment contract shall include a statement by the foreign medical graduate that he or she agrees to meet the requirements set forth in Section 214(k) of the Immigration and Nationality Act. The employment contract shall be valid for at least three years and the geographical areas of employment shall only be in areas, within the respective state, designated by the Secretary of Health and Human Services as having a shortage of health care professionals;

(D) Evidence establishing that the geographic area or areas in the state in which the foreign medical graduate will practice medicine are areas which have been designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

(E) Copies of all forms IAP–66 issued to the foreign medical graduate seeking the waiver;

(F) A copy of the foreign medical graduate's *curriculam vitae*;

(G) A copy of the statement of no objection from the foreign medical graduate's country of nationality or last residence; and,

(H) Because of the numerical limitations on the approval of waivers under Public Law 103–416, i.e., no more than twenty waivers for each State each fiscal year, each application from a State Department of Public Health, or its equivalent, shall be numbered sequentially, beginning on October 1 of each year.

(4) The Agency's Waiver Review Branch shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Commissioner. Except as set forth in § 514.44(g)(4)(i), the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency.

* * * * *

8. In newly designated paragraph (g)(4)(i), by inserting ''(or, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent)'' after ''interested United States Government agencies.''

[FR Doc. 95–7922 Filed 3–31–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–111–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to Pennsylvania's Small Operator Assistance Program (SOAP) rules. The amendment is intended to revise the Pennsylvania SOAP program to be consistent with section 507(c) of SMCRA (Energy Policy Act of 1992) and 30 CFR part 795. The proposed amendment would provide more comprehensive assistance to SOAP participants than currently allowed.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15, and 938.16.

II. Submission of the Amendment

The Energy Policy Act of 1992, Pub. L. 102–486, October 24, 1992, amended several sections of SMCRA. Section 507(c) was amended to expand the coverage of free services that could be provided to qualified applicants for permit application information under SOAP. Before enactment of the Energy Policy Act, services provided by section 507(c) covered the determination of probable hydrologic consequences required by subsection 507(b)(11) and the statement of the results of test boring or core sampling required by subchapter 507(b)(15). The section 507(c) revisions expanded the services under subsection 507(b)(11) to include the engineering analyses and designs necessary for their determination. The revisions also added additional allowable services. These additional services include: the development of cross-section maps and plans required by subsection (b)(14); the geologic drilling and statement of test boring and core sampling required by subsection (b)(15); the collection of archaeological information required by subsection (b)(13) and any other archaeological and historical information required by the regulatory authority; pre-blast surveys required by section 515(b)(15)(E); and the collection of site-specific resource information and the production of protection and enhancement plans for fish and wildlife habitats and other environmental value required by the regulatory authority.

The Energy Policy Act also added section 507(h) which makes the operator liable for reimbursement of SOAP expenses if they exceed the 12-month coal production limit.

OSM published final regulations to implement the above statutory provisions in the **Federal Register**, 59 FR 28136–28174, May 31, 1994.

The Pennsylvania Department of Environmental Resources (PADER) published proposed rules in the Pennsylvania Bulletin (24 Pa.B. 2120–2124, April 23, 1994), to revise the existing SOAP provisions to be consistent with the Federal SOAP revisions. On October 24, 1994, PADER submitted these rules as a program amendment (Administrative Record Number PA 833.00).

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58802), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 15, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program.

A. Revisions to Pennsylvania's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State regulation 25 Pa. Code, chapter	Subject	Federal counterpart
86.81(1)(i) ...	Probable hydrologic consequences.	30 CFR 795.9(b)(1).
86.81(1)(ii) ..	Drilling services.	30 CFR 795.9(b)(2).
86.81(1)(v) ..	Preblast surveys.	30 CFR 795.9(b)(5).
86.83(b)(2), (b)(3).	Attributed production.	30 CFR 795.6(a)(2)(i) and (ii).
86.85(a)(1) and (2).	Application approval.	30 CFR 795.9(a).
86.94(a)(4) and (5).	Applicant liability.	30 CFR 796.12(a)(2) and (3).

Because the above proposed provisions are identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal regulations.

B. Revisions to Pennsylvania's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

1. Section 86.81, Program Services

At section 86.81(1), Pennsylvania proposes to delete the word ''laboratory'' and to replace that term with ''consultant.'' With this change, the regulation provides that the PADER will select and pay a qualified consultant for providing approved SOAP program services.

The counterpart Federal language at 30 CFR 795.9(a) uses the term ''laboratory.'' In its submittal of this change, PADER explained that laboratories in Pennsylvania generally provide only the chemical analyses of water and overburden samples and work as subcontractors to professional engineering and geological consultants who actually collect and evaluate data under contract with the PADER. The Director concurs that use of the term ''consultant'' more closely reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that use of the term ''consultant'' is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the counterpart Federal regulations at 30 CFR Part 795.

2. Subsections 86.81(1)(iii) and (iv), Program Services

At subsections 86.81(1) (iii) and (iv), Pennsylvania lists some of the permit application requirements that PADER will fund through the SOAP program services. Subsection 86.81(1)(iii) is the counterpart to 30 CFR 795.9(b) (4) and (6) and would provide funding for services that would provide a description of the existing resources within and adjacent to the proposed permit area.

Subsection 86.81(1)(iv) is the counterpart of 30 CFR 795.9(b)(3) and would provide funding for services that would provide a detailed description, to include maps, plans and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed.

In both of these provisions, 86.81(1)(iii) and (iv), Pennsylvania provides several references to regulations that address the data requirements for specific types of mining activities that will be funded under the expanded SOAP services. In general, the services which Pennsylvania is proposing to fund are authorized in the counterpart Federal regulations at 30 CFR 795.9(b) (3), (4), and (6). However, the references cited by Pennsylvania are general references and may include, in addition to fundable services, permit application requirements which, if funded, would extend SOAP coverage beyond the limits established by SMCRA and the Federal regulations at 30 CFR 795.9(b).

Section 507(c)(1) of SMCRA establishes the SOAP to pay for various permit application requirements, including (a) the determination of probable hydrologic consequences; (b) the development of cross-sections, maps, and plans; (c) the geologic drilling and statement of results of test borings and core samplings; (d) the collection of archaeological information and the preparation of plans necessitated thereby; (e) preblast surveys; and (f) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values. The Federal rules at 30 CFR 795.9(b) further clarify which permit application requirements may be funded through SOAP.

30 CFR 795.9(b)(3) provides for the funding of the development of cross-section maps and plans required by 30 CFR 779.25 for surface mining and section 783.25 for underground mining permit applications.

30 CFR 795.9(b)(4) provides for the funding of the collection of archeological and historic information and related plans required by 30 CFR 779.12(b) and 783.12(b) and 30 CFR 780.31 and 784.17 and any other archeological and historic information required by the regulatory authority.

30 CFR 795.9(b)(6) provides for the funding of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under SMCRA.

OSM's review of the references cited by Pennsylvania at subsections 86.81(1) (iii) and (iv) has determined that funding has not been explicitly authorized by the Federal regulations at 30 CFR 795.9(b) for the permitting requirements contained in the following Pennsylvania citations:

25 Pa. Code
87.41–42
87.48–49
87.52–53
87.68
87.70–76
87.78–83
88.21–22(1)
88.28–29
88.30
88.32
88.41–44
88.46
88.48
88.50–55
88.57–61
89.31–32
89.37
89.71–73
89.102
89.121–122
89.141(d)

Also, the permitting requirements at 25 Pa. Code 87.77, 88.56, and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks.

Both the Energy Policy Act and 30 CFR 795.9(b)(1) authorize reimbursement for engineering analyses and designs necessary for the determination of probable hydrologic consequences, with the rule specifying that this provision applies to ''engineering analyses and designs necessary for the determination in accordance with sections 780.21(f), 784.14(e), and any other applicable provisions of this chapter.'' Accordingly, preparation of engineering analyses and designs essential to development of an adequate probable hydrologic consequences determination is an authorized SOAP service, whereas preparation of analyses and designs needed solely to satisfy other program requirements is not. For example, preparation of diversion and impoundment plans and designs would be an authorized SOAP service only if the laboratory or other qualified entity cannot satisfactorily prepare the probable hydrologic consequences determination in the absence of these plans and designs.

The Energy Policy Act further authorizes funding for the development of cross sections, maps and plans required by section 507(b)(14) of SMCRA. These requirements are reflected primarily in 30 CFR 779.25 and 783.25, which are cross-referenced in 30 CFR 795.9(b)(3). However, section 507(b)(14) of the Act also provides the basis for those portions of 30 CFR 780.18(b)(3) and 784.13(b)(3) that require cross sections showing the anticipated final surface configuration of the proposed permit area. Therefore, the regulatory authority may fund preparation of these cross sections even though 30 CFR 795.9(b)(3) does not cross-reference the underlying rules.

Because the requirements for operation and reclamation plans and maps, air pollution control plans, and subsidence control plans are not derived from section 507(b)(14) of SMCRA, SOAP funds may not be used for development of these types of maps and plans unless other provisions of section 507(c) of the Act or 30 CFR 795.9(b) specifically authorize such expenditures. The State may be able to demonstrate that funding for some aspects of these maps and plans is appropriate under 30 CFR 795.9(b)(6), which authorizes information collection and preparation of plans ''for any other environmental values required by the regulatory authority under the Act.''

To be consistent with SMCRA and the counterpart Federal regulations, Pennsylvania must ensure that when implementing its SOAP provisions, it does not authorize expenditures outside of those allowed by SMCRA and the Federal regulations as discussed above. Although the Energy Policy Act and the revisions to 30 CFR 795.9(b) have greatly expanded the scope of services available under SOAP, funding remains limited. Therefore, the program administrator may need to ration funding under the provisions of 30 CFR 795.11(b).

The Director is approving subsections 86.81(1) (iii) and (iv) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing Federal regulations at 30 CFR 795.9(b) as discussed above. The Director is not approving proposed subsections 86.81(1) (iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

3. Section 86.82, Responsibilities

Subsection 86.82(a)(1) is being amended to provide that the PADER will develop and maintain a list of qualified consultants and qualified laboratories, and select and pay consultants for services rendered. Prior to this amendment, the provision included qualified laboratories but not consultants. As discussed above in Finding B–1, the addition of ''consultants'' more closely reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that the use of the term ''consultant'' is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the Federal regulations.

4. Subsection 86.83(a)(2), Eligibility for Assistance

Subsection 86.83(a)(2) is being amended to provide that an applicant is eligible for assistance if the applicant establishes that the probable total and attributed production from the applicant's operations during the 12-month period immediately following the date on which the applicant is issued the mining activities permit will not exceed 300,000 tons.

30 CFR 795.6(a)(2) provides that to be eligible for assistance, the applicant must establish that the probable total attributed annual production from all locations will not exceed 300,000 tons. In the preamble to the approval of the Federal regulation at 30 CFR 795.6(a)(2) (59 FR 28139, May 31, 1994), OSM stated that in order to reduce the potential for fraud and abuse, past production will be used as the standard for evaluating whether an operator's annual production is reasonably expected to be within the 300,000 ton limit for eligibility under the SOAP. Therefore, to be eligible for SOAP assistance, past production records should provide sound evidence that following SOAP approval, production is reasonably likely to remain under 300,000 tons annually.

Therefore, the Director is approving the proposed amendment to subsection 86.83(a)(2) except to the extent that the provision only requires the applicant to establish that annual production following permit issuance is reasonably likely to remain under 300,000 tons for just the first year. In addition, the Director is requiring that Pennsylvania further amend subsection 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year.

5. Subsection 86.86(b)(6), Right of Entry

This provision is being amended to provide that the application for SOAP assistance shall contain copies of documents which show that the legal right of entry necessary to meet the provisions of section 86.64 (relating to right of entry) have been obtained by the applicant.

The existing subparagraphs 86.84(b)(6) (i) and (ii) are being deleted. Subsection (i) required the applicant to provide documents that show the applicant has a legal right to enter and commence mining within the permit area. Subsection (ii) required documents showing a legal right of entry has been obtained for the office, department and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

The Director finds that the proposed amendment with the requirement to comply with the approved right of entry provisions at section 86.64 is no less effective than the Federal regulations at 30 CFR 795.7(f).

6. Subsection 86.86(a), Notice

This provision is being amended to delete ''laboratories'' and add in its place ''consultants.'' As discussed above in Finding B–1, the use of ''consultant'' does not render the Pennsylvania program less effective than the corresponding Federal regulations.

7. Subsection 86.87(a), Determination of Data Requirements

This provision is being amended to provide that if specifically authorized by the PADER in an approved work order, the development of information on environmental resources, operations plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities. While there is no direct counterpart in the Federal regulations, the provision is consistent with the SOAP provision at 30 CFR part 795.9(c) and can be approved.

8. Section 86.88, Data for Probable Hydrologic Consequences (PHC)

This provision is being deleted in its entirety. The requirement to provide a PHC determination for the applicant is located at subsection 86.81(1)(i). The Director finds that the proposed deletion does not render the Pennsylvania program less effective and can be approved.

9. Section 86.89, Data for Test Borings and Core Samplings

This provision is being deleted in its entirety. The requirement to provide data for the results of test borings and core samplings is located at subsection 86.81(1)(ii). The Director finds that the proposed deletion does not render the Pennsylvania program less effective and can be approved.

10. Section 86.91, Definitions and Responsibilities

In subsection 86.91(a), Pennsylvania is amending the term ''qualified laboratory'' to read ''qualified consultant and qualified laboratory.'' Nonsubstantive wording changes are also being made.

The term ''qualified consultant'' is being added to subsections 86.91(b) and (c).

As discussed in Finding B–1, the use of the term ''qualified consultant'' more closely reflects the circumstances by which the SOAP services are obtained in Pennsylvania. The Director finds that the use of the term ''qualified consultant'' is consistent with the intent of the Federal SOAP regulations and does not render the Pennsylvania program less effective than the Federal regulations.

11. Section 86.92, Basic Qualifications

Pennsylvania is proposing to add ''qualified consultant'' or ''consultant'' to subsections 86.92 (a) and (b). As discussed above in Finding B–1, the use of consultants to provide SOAP program services does not render the Pennsylvania program less effective and can be approved.

The State is adding ''overburden laboratory'' at subsection 86.92(a)(1). As amended, 86.92(a)(1) requires that to be designated as a qualified consultant or laboratory, the consultant or laboratory must be staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed as a water laboratory, ''overburden laboratory'' or consulting firm. The Director finds that this amendment is consistent with 30 CFR 795.10(a)(1).

The State is adding a new subsection 86.92(a)(6)(iv) to require a demonstration by the laboratory or consultant that it has the analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in ''[t]he Department's Overburden Sampling and Testing Manual.''

The Director finds this requirement is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 795.10(a)(4) concerning qualified laboratories.

At subsection 86.92(b) the State is deleting language and adding replacement language to make it clear that a qualified laboratory or consultant must be capable of performing the program services in newly revised section 86.81. The Director finds this change to be consistent with and no less effective than the Federal regulations at 30 CFR 795.10(a)(6).

12. Section 86.93, Assistance Funding

The State is deleting the phrase ''or the costs of test borings or core sampling'' from subsection 86.93(a). As amended, the provision prohibits SOAP funds from OSM to be used to cover administrative costs of the PADER. The Director finds that the deletion of the prohibition that SOAP funds may not be used to cover the costs of test borings or core sampling is consistent with 30 CFR 795.9(b)(2) which authorizes such payments.

13. Section 86.94, Applicant Liability

a. The State is adding the term ''consultant'' at subsections 86.94 (a), (a)(2), and (d)(1). The State is deleting the term ''laboratory'' at subsections (a)(2) and (d)(1). As discussed above in Finding B–1, the use of the term ''consultant'' more accurately reflects the circumstances by which SOAP program services are obtained in Pennsylvania. The Director finds that use of the term ''consultant'' is consistent with the intent of the Federal regulations to pay for SOAP program services, and does not render the Pennsylvania program less effective than the Federal regulations at 30 CFR Part 795.

b. The State is adding the phrase ''beyond the applicant's control'' to the end of the sentence in subsection 86.94(a)(2). With this change, the applicant would not be liable for the costs of program services rendered if the consultant's report indicates that the application is not approvable for

technical reasons beyond the applicant's control. The Director finds the addition is consistent with the Federal regulation at 30 CFR 795.12(b) which allows the SOAP administrator to waive the reimbursement obligation if the administrator finds that the applicant at all times acted in good faith.

14. Section 86.95, Measurement

This provision is being amended to delete references to the specific name and number of the OSM form on which an operator reports coal production for purposes of complying with the Abandoned Mine Land Reclamation Program requirements. The Director finds that this change improves the accuracy of the provision and does not render the Pennsylvania program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor responded that the amendment will not impact on any existing MSHA regulations (Administrative Record No. PA 833.06). The Soil Conservation Service of the U.S. Department of Agriculture responded that there is no indication that the approval of this amendment would result in any environmental degradation or cause accelerated erosion and sedimentation problems (Administrative Record No. PA 833.05).

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 15, 1994, **Federal Register** (59 FR 58802). The comment period closed on December 15, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Pennsylvania Coal Association commented in support of the amendment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. PA 833.01). EPA responded on December 6, 1994 (Administrative Record No. PA 833.08), and concurred with the proposed amendments.

V. Director's Decision

Based on the findings above, the Director is approving, except as noted below, Pennsylvania's SOAP amendment as submitted by Pennsylvania on October 24, 1994.

As noted in Finding B–2 above, the Director is approving chapter 86.81(1)(iii) and (iv), concerning fundable program services, only to the extent that Pennsylvania will implement these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1) and the implementing Federal regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(1) (iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above in Finding B–2 for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

As discussed in Finding B–4 above, the Director is approving chapter 86.83(a)(2) except to the extent that the provision limits an operator's obligation to establish that annual production following permit approval is reasonably likely to remain under 300,000 tons for all years, not just the first year. In addition, the Director is requiring that Pennsylvania further amend chapter 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance is reasonably likely to remain under 300,000 tons for all years, not just the first year.

The Federal regulations at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director'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, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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 has determined 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 24, 1995.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

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

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

2. In Section 938.15, paragraph (cc) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(cc) The SOAP amendment to the Pennsylvania program concerning the Small Operator Assistance Program as submitted to OSM on October 24, 1994, is approved, except as noted herein, effective April 3, 1995:

25 Section 86.81—Program services. Subsection 86.81(1)(iii) and (iv) are approved to the extent that the State will implement those services consistent with the SOAP funding provisions of SMCRA section 507(c)(1) and the implementing Federal regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(1)(iii) and (iv) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed in the preamble at Finding B–2 for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

25 Section 86.82—Responsibilities.

25 Section 86.83—Eligibility for assistance. Subchapter 86.83(a)(2) is approved except to the extent that the provision only requires the operator to establish that annual production following permit approval is reasonably likely to remain under 300,000 tons for just the first year.

25 Section 86.84—Applications for assistance.

25 Section 86.85—Application approval.

25 Section 86.86—Notice.

25 Section 86.87—Determination of data requirements.

25 Section 86.88—Deletion of this subchapter.

25 Section 86.89—Deletion of this subchapter.

25 Section 86.91—Definitions and responsibilities.

25 Section 86.92—Basic qualifications.

25 Section 86.93—Assistance funding.

25 Section 86.94—Applicant liability.

25 Section 86.95—Measurement.

3. In § 938.16, paragraph (ooo) is added to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(ooo) By September 1, 1995, Pennsylvania shall amend 25 chapter 86.83(a)(2) to be no less effective than 30 CFR 795.6(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year.

[FR Doc. 95–7817 Filed 3–31–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 162 and 165

[CGD11–94–007]

RIN 2115–AE84

Regulated Navigation Area; San Francisco Bay Region, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas (RNAs) within the San Francisco Bay Region in the waters of the Golden Gate, Central Bay, Lower Bay, San Pablo Bay and Carquinez Strait. This action is necessary due to vessel congestion in areas where maneuvering room is limited. These RNAs will increase navigation safety in the San Francisco Bay Region by organizing traffic flow patterns; reducing meeting, crossing, and overtaking situations between large vessels in constricted channels; and limiting vessel speed. This rulemaking will also remove existing regulatory language relating to the Pinole Shoal Channel which with be incorporated into the RNA.

EFFECTIVE DATE: This rule is effective on May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Commander Dennis Sobeck, Commanding Officer, Vessel Traffic Service San Francisco, San Francisco; telephone (415) 556–2950.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Commander Dennis Sobeck, Project Manager, Vessel Traffic Service San Francisco, and Lieutenant Commander C. M. Juckniess, Project Counsel, Eleventh Coast Guard District Legal Office.

Regulatory History

On December 12, 1994, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (59 FR 63947). The comment period ended February 10, 1995. The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

In 1972, the Coast Guard, with input from various members of the San Francisco Bay maritime community, established voluntary vessel traffic routing measures for the San Francisco Bay region that consisted of traffic lanes in the Golden Gate and the Central Bay extending to Pinole Shoal Channel; separation zones; a precautionary area east of Alcatraz Island; and an Oakland Harbor Limited Traffic Area. Compliance with these routing measures was voluntary and intended for use by vessels 300 gross tons or greater.

In 1991, the precautionary area east of Alcatraz Island was expanded to include the water area between the San Francisco waterfront and Treasure Island, replacing the traffic lanes in that area. A deep water route was established north of Harding Rock.

In 1993, the Coast Guard, with input from the Harbor Safety Committee of the San Francisco Bay Region, modified the voluntary traffic routing measures to better conform to International Maritime Organization (IMO) traffic routing standards. The 1993 modification added