public is aware of which highways will be open to these vehicles, we are setting out, in an Appendix to this notice, the FAP highways in Connecticut on which the trucks may operate.

Issued on May 20, 1983.

R. A. Barnhart,

Federal Highway Administrator.

Appendix—State Proposed Other Qualifying Highways Connecticut

Posted route No.	From	To
CT-2	Columbus Blvd Hartford	Jct. I-290 Norwich.
CT-8	I-95 Bridgeport	Jct. I-84 Waterbury.
CT-9	I-95 Old Saybrook	Jct. I-91 Cromwell.
CT-20	Jct. CT 401 (Bradley International Airport, Windsor Locks.	I-91 Windsor.
CT-52[1]	I-95 East Lyme	Massachusetts St Line, Thompson.
CT-401	Jct. CT 20 Windsor Locks	Bradley International Airport Access Rd. Windsor Locks.

[1] CT 52 was approved as I-290 on April 18, 1983.

[FR Doc. 83-14013 Filed 5-23-83; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-83-1074]

Section 8—Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of effective date.

SUMMARY: This document announces the effective date for the interim rule published in the **Federal Register** on April 15, 1983 (48 FR 16424) which amends the Section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all market areas, in compliance with the requirements of Section 8(c)(1) of the U.S. Housing Act of 1937. The rule provided for a 30-day public comment period from the date of publication, and the effective date provision of the rule stated that, after the comment due date of May 16, 1983, a notice of the effective date of the rule would be published in the **Federal Register**.

On the basis of its consideration of the comments received during the public comment period, HUD has determined not to make any changes at this time in the Fair Market Rents published on April 15, 1983. Accordingly, all of the Fair Market Rents contained in Schedule A, as published in the **Federal Register** on April 15, 1983, will become effective as provided under "Effective Date", below.

However, HUD will continue carefully to evaluate all comments received, whether during or after expiration of the public comment period, to determine whether any further revision of the Fair Market Rent schedules should be made. If this evaluation indicates a need to make any further revision of the Fair Market Rent schedules for particular market areas, HUD will publish a revision of those schedules at a future date.

EFFECTIVE DATE: The effective date for the interim rule published April 15, 1983, at 48 FR 16424, is May 19, 1983. (For application of the Fair Market Rents in the interim rule in cases where the owner's application for Section 202/Section 8 assistance or owner's proposal for other Section 8 new construction or substantial rehabilitation assistance is accepted for processing by HUD (by FmHA in the case of assistance under Part 884; by the State Agency in the case of assistance under Part 883) prior to the effective date of this Rule, see Note 2 to Schedule A in the interim rule.)

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Director, Technical Support Division, Department of Housing and Urban Development, Room 6138, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 426-7113. This is not a toll-free number.

Dated: May 19, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-13880 Filed 5-23-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

Paroling, Recommitting, and Supervising Federal Prisoners

28 CFR Part 2

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: To remove redundancy in its regulations the U.S. Parole Commission is editorially simplifying its rules.

DATE: June 6, 1983.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD. 20815, Tel. (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Parole Commission is simplifying its rules at 28 CFR 2.13(d), Initial Hearing: Procedure. The generic language of this provision is redundant with 28 CFR 2.18.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4206(a)(6), 28 CFR 2.13 is amended by revising paragraph (d) as follows:

§ 2.13 Initial hearing; procedure.

* * * * *

(d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in § 2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.

Benjamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 83-13767 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: Because of administrative costs the Commission is simplifying its current procedures concerning a prisoner's refusal to sign a parole certificate.

EFFECTIVE DATE: July 4, 1983.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of the General Counsel, U.S. Parole Commission, 5550

Friendship Blvd., Chevy Chase, MD. 20815. Tel. (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Commission is amending its rules at 28 CFR 2.40, Conditions of Release, by removing the requirement that a prisoner be given a special interview on the next docket when he refuses to sign a parole certificate. This change is intended to simplify Commission procedures and reduce costs. The Commission has found that the consequences of a prisoner's refusal to sign a parole certificate (i.e., waiver of parole) can be adequately explained to the prisoner by institutional staff and documented. A prisoner can, of course, reapply for parole at any time in accordance with 28 CFR 2.11.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR 2.40 is amended by revising paragraph (h) as follows:

§ 2.40 Conditions of release.

* * * * *

(h) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of refusal to sign. To be again considered for parole, the prisoner must reapply for parole consideration. With respect to prisoners who are required to be released to supervision through good time reductions (pursuant to 18 U.S.C Sections 4161 and 4164), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the releasee to sign the parole certificate.

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 5, 1983.

Benjamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 83-13771 Filed 5-23-83; 8:45 am]

BILLING CODE 7035-01-M

Office of the Attorney General

28 CFR Part 45

[Order No. 1013-83]

Delegation of Authority With Respect to Review of Financial Disclosure Reports

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends Department of Justice Standards of Conduct regulations to provide for the Deputy Attorney General to review financial disclosure reports filed by the Associate Attorney General, the Solicitor General, and the Director of the Federal Bureau of Investigation. The Attorney General retains responsibility for reviewing financial disclosure reports filed by the Deputy Attorney General.

EFFECTIVE DATE: May 16, 1983.

FOR FURTHER INFORMATION CONTACT: Beth Nolan, Attorney-Adviser, Office of Legal Counsel, Department of Justice, Washington, D.C. 20530. Tel: (202) 633-3711.

SUPPLEMENTARY INFORMATION: This action is not a rule within the meaning of Executive Order No. 12291 or the Regulatory Flexibility Act, 6 U.S.C 601 *et seq.*

List of Subjects in 28 CFR Part 45

Conflicts of interests.

PART 45—[AMENDED]

Accordingly, by the authority vested in me by 28 U.S.C. 509 and 510; 5 U.S.C. 301; and the Ethics in Government Act of 1978, 92 Stat. 1824, § 45.735-27(d)(1) (ii) and (iii) of Title 28, Code of Federal Regulations, is revised to read as follows:

§ 45.735-27 Public financial disclosure requirements.

* * * * *

(d) * * *

(1) * * *

(ii) The Attorney General shall review reports filed by the Deputy Attorney General;

(iii) The Deputy Attorney General shall review reports filed by the Associate Attorney General, Solicitor General, Director of the Federal Bureau of Investigation, and the head of each division under his supervision;

* * * * *

Dated: May 16, 1983.

William French Smith,

Attorney General.

[FR Doc. 83-13908 Filed 5-23-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1912 and 1912a

Advisory Committees; Notice of Meetings, and Quorum Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document changes the notice requirements for OSHA advisory committee meetings from 7 to 15 days in order to conform to the applicable Federal law. In order to improve these regulations and to establish better organization and management in the use of the National Advisory Committee on Occupational Safety and Health (NACOSH) the quorum requirement is changed to be a simple majority.

EFFECTIVE DATE: May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N-3637, United States Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523-8148.

SUPPLEMENTARY INFORMATION: In October 1973, OSHA regulations with regard to advisory committees were promulgated. 29 CFR Part 1912, entitled "Advisory Committees on Standards," was promulgated on October 11, 1973 (38 FR 28035); and Part 1912a, entitled "National Advisory Committee on Occupational Safety and Health," was promulgated on October 18, 1973 (38 FR 28934). This document amends Parts 1912 and 1912a with respect to the provisions concerning notices of meetings. Additionally, Part 1912a is amended with regard to the quorum requirements.

Notice of Meetings

Section 1912.27 currently requires that public notice of any advisory committee meeting be given "at least seven (7) days in advance of the meeting." Section 1912a.7 has a similar seven day notice requirement. Since this notice must be published in the **Federal Register** these minimum tme periods should conform to the Federal Register Act (FRA) (44 U.S.C. Chapter 15). Section 1508 of the FRA requires a minimum of 15 days notice under normal circumstances. OSHA has generally provided the 15 days' notice required by the FRA. In order to conform these OSHA regulations to applicable federal law and to OSHA's practice, this amendment changes the seven day notice periods to 15 day notice periods.

Quorum requirements for NACOSH

Under current NACOSH regulations a quorum is a majority of the members of the committee, provided that a member representing management, labor, and the public are included in the majority (§ 1912a.6(a)). While the need for a majority of the members to constitute a quorum is common, the additional requirements are not. In the preamble to the **Federal Register** document adopting the NACOSH regulations, no reason was given for adopting such a quorum rule. Section 7(a) of the Act, which establishes NACOSH, sets forth the representational make-up of the committee but is silent with regard to a quorum. Similarly, section 5(b)(2) of the Federal Advisory Committee Act (FACA) requires a fair balance in the representational composition of advisory committees, but does not address any special procedures or requirements related to a quorum.

This quorum requirement, for NACOSH meetings, has created a difficult and unnecessary scheduling burden on OSHA. Since there are only two members each of the management and the labor groups in NACOSH, and at least one of each group must be in attendance to satisfy current quorum requirements, it is often very difficult to accommodate members' schedules and to set dates for NACOSH meetings. And once meetings are set, unforeseen changes in plans of even one member (if he is the only labor or management representative who was to attend) can defeat the quorum. This in turn creates problems for other committee members and the public.

Additionally, these issues were discussed at length at the December 2, 1982, meeting of NACOSH. By a vote of seven to two with one abstention, the committee after deliberation recommended amending the quorum requirement to be a simple majority (Transcript at 89). In light of the above, OSHA finds that the quorum requirements of § 1912a.6(a) for NACOSH present an unnecessary burden of scheduling meetings that could work to impede the orderly functioning of the committee and could prevent it from performing its important statutory function. A simple majority quorum will promote the orderly functioning of the Committee by reducing scheduling burdens placed on OSHA by the current representational requirements of the quorum. Nothing in this amendment will prevent any member's or group's full participation in Committee meetings. Achieving a balanced point of view in Committee recommendations is assured by the representational composition of the Committee and the protections of § 1912a.5 which assures that all views—majority, dissenting, and individual—will be included in any report by NACOSH, and assures that any committee member may submit his own views directly to the Secretary.

A similar quorum requirement for the Advisory Committee for Construction Safety and Health (the only existing § 7(b) committee) has not created scheduling difficulties since each representational group has five members on the committee. Hence no changes in these quorum regulations are warranted at this time.

OSHA, in accordance with Executive Order 12291 (46 CFR 13193), hereby states that this rulemaking does not constitute a "major rule" since its effect will not meet any of the definitional elements in section 1(b) of the Executive Order.

Notice of proposed rulemaking, public rulemaking procedures, and delay in effective date are not required for these amendments to Parts 1912 and 1912a since they relate solely to agency management and procedure.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C.

List of Subjects in 29 CFR Parts 1912 and 1912a

Advisory committees, Occupational safety and health.

Accordingly, pursuant to sections 7 and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1597, 1599, 29 U.S.C. 656, 657), 5 U.S.C. 553, and App. I, and Secretary of Labor's Order No. 8–76 (41 FR 25059), Parts 1912 and 1912a of Title 29, Code of Federal Regulations, are hereby amended as set forth below.

Signed at Washington, D.C. this 19 day of May, 1983.

Thorne G. Auchter,
Assistant Secretary of Labor.

PARTS 1912 AND 1912a—[AMENDED]

Parts 1912 and 1912a of Title 29 CFR are amended by revising §§ 1912.27, 1912a.6(a) and 1912a.7 to read as follows:

§ 1912.27 Notice of meetings.

Public notice of any meeting of an advisory committee shall be given by the officer or employee calling the meeting at least fifteen (15) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given to the extent that any advance notice is practical. It shall, however, be a general policy to publish notices as far in advance of the meeting as circumstances will permit. Such notice shall be given by publication in the **Federal Register.** In addition, notice may be given by such other means as press releases.

§ 1912a.6 Quorum.

(a) A majority of the members of the Committee shall constitute a quorum.

* * * * *

§ 1912a.7 Notice of meetings.

Public notice of any meeting of the Committee shall be given by the person calling the meeting in accordance with § 1912a.4 or at his direction at least fifteen (15) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given. Such notice shall be given by publication in the **Federal Register** as much in advance of the meeting as circumstances will permit. In addition, notice may be given by such other means as press releases.

[FR Doc. 83-13935 Filed 5-23-83; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Removal of Certain Conditions on the Approval of the Ohio Permanent Regulatory Program and Approval of Amendments to the Regulatory Program and Abandoned Mine Land Reclamation Plan Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 935 by: 1) removing certain conditions and modifying the deadline for Ohio to meet other conditions on the approval of the Ohio program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA); 2) approving additional amendments to the Ohio

regulatory program and abandoned mine land reclamation (AML) plan; 3) adding two new conditions of approval concerning appeal rights and bond release requirements. Ohio received conditional approval of its permanent regulatory program and approval of its AML plan effective August 16, 1982.

EFFECTIVE DATE: The actions in this notice are effective May 24, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982, **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)—(f)(10), (g), (h)(1)—(h)(3), (i)(1)—(i)(3), (j), and (k)(1)—(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1), and (k)(1) by August 8, 1983, deficiency (e) by September 16, 1982, and the remaining deficiencies by February 8, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

Ohio did submit to OSM on September 16, 1982, a revised program regulation satisfying condition (e). The Secretary approved the revised regulation and removed condition (e) on January 17, 1983 (48 FR 1957).

On February 1, 1983, Ohio requested an extension of the deadline for the State to meet conditions (k)(3), (k)(4), and (k)(5). These conditions were due February 8, 1983. On February 28, 1983, OSM published notice that it was considering modifying the deadline for Ohio to meet those parts of condition (k), and requesting public comment. The comment period closed March 15, 1983 and no comments were received. Accordingly, the Secretary is extending the deadline by which Ohio must meet conditions (k)(3), (k)(4), and (k)(5) to August 8, 1983.

II. Submission of Amendments

On January 6, 1983, Ohio submitted materials to OSM intended to: satisfy conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k)(1) and (k)(2); amend the approved State program; and amend the approved Abandoned Mine Land Reclamation Plan. The materials submitted included two legislative bills (Amended Substitute Senate Bills 240 and 323) to amend the Ohio Revised Code (ORC); numerous regulation changes to the Ohio Administrative Code (OAC), and two policy statements from the Division of Reclamation.

On January 21, 1983, OSM published notice in the **Federal Register** announcing receipt of these provisions and inviting public comments (48 FR 2800).

On May 18, 1983, the Administrator of the Environmental Protection Agency transmitted written concurrence on the amendments to the Ohio program which were submitted January 6, 1983.

III. Secretary's Findings

Conditions of Approval

1. *Condition (a).* Condition (a) required the State to enact legislation amending the Ohio Revised Code (ORC) section 1513.01(G)(2) to eliminate the phrase "but not to include public roadways." As discussed in Finding 1.2 of the Secretary's approval (47 FR 34688), the State's definition of "coal mining operations" included this phrase, making it inconsistent with section 701(28)(b) of SMCRA.

The proposed program amendment in Am. Sub. SB 240 does not remove the phrase. Instead, language was added to qualify which public roadways are excluded. The amendment would exclude public roadways, "unless the roadway has been constructed for access to or haulage of coal from a coal mining and reclamation operation or unless public access to the roadway has been denied or restricted."

OSM has clarified the issue of when a road will be excluded from being considered a part of the affected area of a mine, in final rules published August 2, 1982 (47 FR 33430) and April 5, 1983 (48 FR 14814). For a public road to be excluded from the affected area of a mine, it must meet three criteria:

(1) The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) The road is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and

(3) There is substantial (more than incidental) public use of the road.

The amended Ohio definition of "operation" does not include these criteria. Therefore, the amended Ohio language does not sufficiently prescribe which roads are public roads.

The Secretary finds that condition (a) has not been satisfied. However, because Ohio submitted material which it, in good faith, believed to be adequate to satisfy this condition, the Secretary has decided to allow the State until August 8, 1983 (the date originally set for this condition) to submit revised provisions. Such provisions could be an adoption of the criteria now set under the Federal definition or an assurance that such criteria will be utilized. On April 8, 1983, the State was advised of the need to further amend the Ohio Revised Code or otherwise amend its program to meet this condition. By letter dated April 27, 1983, the State agreed to do so by August 8, 1983. In the interim, Ohio has agreed to apply the above mentioned criteria to determine when a road may be excluded from being considered part of the affected area of a coal mining operation as defined in ORC 1513.01(G).

2. *Condition (b).* Condition (b) required the State to enact legislation or provide an opinion from the Ohio Attorney General limiting the effect of Section 5 of ORC Chapter 1513 to Federal courts with jurisdiction in the State. As discussed in Finding 1.12, the State provision would nullify the effect of SMCRA or the Federal regulations if a Federal court in a jurisdiction outside Ohio were to overturn a provision of the Federal Act or regulations.

In response to this condition, Am. Sub. SB 323 has repealed Section 5 and amended Section 4 to limit the effect of Section 4 to Federal courts with jurisdiction in Ohio. The Secretary finds that the amendment satisfies condition (b).

3. *Condition (c).* Condition (c) required the State to amend the Ohio Code and promulgate regulations to require work be performed by registered professional engineers in instances required by SMCRA and the Federal regulations. SMCRA requires that qualified registered professional engineers or, in some instances, professional geologists, design and certify certain cross-section maps or plans for a permit application. These requirements are found in SMCRA sections 507(b)(14), 515(b)(10)(B), 515(b)(22)(H), and 515(c)(3)(B)(vii). (See Finding 1.5, 47 FR 34690). Am. Sub. SB 240 amends ORC Chapter 1513 in several ways relating to this condition.

The proposed changes to ORC Chapter 1513 are as follows:

(1) In ORC section (1513.07(B)(2)(n)(i), the words "registered surveyor" have

been deleted. The Secretary finds this change is consistent with SMCRA.

(2) In ORC section 1513.16(B)(3)(b)(vii), the words "registered surveyor" have been deleted. The Secretary finds this change is consistent with SMCRA.

(3) In ORC section 1513.07(B)(2)(n)(i), the following language was added, "Registered Surveyors shall be allowed to perform all plans, maps, and certifications under this chapter as they are authorized under ORC Chapter 4733 of the Ohio Revised Code". ORC Chapter 4733 provides for the registration of professional engineers and surveyors in Ohio. The Secretary finds this amendment would allow registered surveyors to perform duties which SMCRA requires be done by registered professional engineers, and allows surveyors to certify work which SMCRA provides only engineers or geologists certify. Therefore, the Secretary cannot approve this amendment.

The Secretary further notes that ORC section 1513.16(A)(10)(b)(ii) has not been amended to remove the authorization for registered surveyors to perform duties which SMCRA requires be performed by registered professional engineers, nor has the Ohio Administrative Code been amended as required by condition (c).

The Secretary approves the amendments deleting "registered surveyor" from ORC section 1513.07(B)(2)(n)(i) and 1513.16(B)(3)(b)(vii). The proposed amendment to ORC section 1513.07(B)(2)(n)(i), referencing ORC Chapter 4733, concerning registered surveyors, is disapproved. The Secretary finds that condition (c) has not been satisfied. However, because Ohio submitted material which it, in good faith, believed to be adequate to satisfy this condition, the Secretary has decided to allow the State until August 8, 1983 (the date originally set for this condition) to submit revised provisions. On April 8, 1983, the State was advised of the need to further amend the Ohio Revised Code and otherwise amend its program to meet this condition. By letter dated April 27, 1983, the State agreed to do so by August 8, 1983. In the interim, the State has agreed as a matter of policy to require that registered professional engineers certify work performed by registered surveyors in all cases where the Federal Act and regulations require such work to be done by registered professional engineers.

4. *Condition (d).* Condition (d) required the State to amend its rules to require the modification of existing structures under the circumstances specified in 30 CFR 701.11(d)(iii). Ohio has amended its rule 1501:13-1-01(E)(2) by substituting the word "shall" for the word "may", so that the rule now requires that an existing structure must be modified. The Secretary finds that the amendment satisfies condition (d) and is approving it.

5. *Condition (f)(1).* Condition (f)(1) required the State to amend its regulations to add a provision for regulating the disposal of coal waste in excess spoil fills, consistent with 30 CFR 816.71(k). Ohio has added rule OAC 1501:13-9-07(H) which provides that coal wastes shall not be disposed of in head-of-hollow or valley fills and may be disposed of in other excess spoil fills if certain requirements are met. The Secretary finds that the regulation is no less effective than 30 CFR 816.71(k) and thus satisfies condition (f)(1).

6. *Condition (f)(2).* Condition (f)(2) required the State to delete the portion of its rule allowing an exemption from contemporaneous reclamation where required by the "method of mining". Ohio has amended its rule OAC 1501:13-9-13(B) to delete the phrase "or where required by the method of mining." The Secretary finds that the revised rule satisfies condition (f)(2).

7. *Condition (f)(3).* Condition (f)(3) required the State to amend its rule OAC 1501:13-9-14(C)(4) to delete the provision allowing areas affected by underground mining operations that have become stabilized over the long term to be retained in their existing configuration. Ohio has deleted this provision and the Secretary finds that condition (f)(3) is statisfied.

8. *Condition (f)(4).* Condition (f)(4) required the State to promulgate regulations requiring resoiling as contemporaneously as practicable with mining. Ohio has added rule OAC 1501:13-9-13(A). The Secretary finds it is no less effective than 30 CFR 816.100, and thus satifies condition (f)(4).

9. *Condition (f)(5).* Condition (f)(5) required the State to promulgate regulations requiring notification to the Division of Reclamation of slides that may have a potential adverse effect on public property, health, safety, or the environment. Ohio has amended its rule OAC 1501:13-9-12(B) to require notification and to require compliance with any remedial measures. The Secretary finds the amended rule is no less effective than 30 CFR 816.99(b) and thus satisfies condition (f)(5).

10. *Condition (f)(6).* Condition (f)(6) required the State to promulgate regulations providing public notice of underground mining schedules consistent with 30 CFR 817.122. Ohio has amended its rule OAC 1501:13-12-02(B) to require such public notice. The Secretary finds that the amended rule satisfies condition (f)(6).

11. *Condition (f)(7).* Condition (f)(7) required the State to promulgate regulations requiring establishing the beginning of the period for extended responsibility under the performance bond requirements consistent with 30 CFR 816.116(b)(1) and to delete or limit the examples of normal management practices and minor regrading. Ohio has amended its rule OAC 1501:13-9-15(E)(5) to delete the two examples of normal management practices and minor regrading, and the Secretary finds that this part of condition (f)(7) has been satisfied. However, condition (f)(7) also required the State to establish the beginning of the period for extended responsibility consistent with the Federal rule. The Federal rule provides that the period begins at the last time of augmented seeding, fertilizing, irrigation or other work necessary to ensure successful revegetation, whereas the Ohio rule provides that the period begins "at the last time of *substantially* augmented seeding,* * *." Ohio has not deleted or defined the word "substantially" to enable the Secretary to conclude that the rule is consistent with Section 515(b)(20) of SMCRA and no less effective than the Federal rule. Therefore, the Secretary finds that condition (f)(7) has not been fully satisfied. The Secretary is amending condition (f)(7) to reflect that part of the condition has been satisfied. Because Ohio submitted material which it, in good faith, believed to be adequate to satisfy this condition, the Secretary has decided to allow the State until August 8, 1983, to submit revised provisions. The State was advised of the need to further amend its rules and by letter of April 27, 1983, agreed to do so by August 8, 1983. In the interim, the State has agreed to satisfy the terms of this condition as a matter of policy.

12. *Condition (f)(8).* Condition (f)(8) required the State to promulgate regulations amending its rule OAC 1501:13-9-09 to require inspection of coal waste banks consistent with 30 CFR 816.82. Ohio has added paragraph (I) to 1501:13-09-9, to require such inspections. The Secretary finds that the amended rule is no less effective than 30 CFR 816.82 and therefore condition (f)(8) is satisfied.

13. *Condition (f)(9).* Condition (f)(9) required the State to promulgate regulations amending OAC 1501:13-9-04(G)(18) to delete authority to grant a variance from applicable Federal and State effluent limitations at the time for

removal of sediment ponds. Ohio has deleted the authority to grant such a variance. The Secretary finds the amended rule no less effective than 30 CFR 816.46(u) and therefore condition (f)(9) is satisfied.

14. *Condition (f)(10).* Condition (f)(10) required the State to amend its regulations to require subsidence control plans to include consideration of damage to streams, water, and associated structures, consistent with 30 CFR 817.126(a). Ohio has added subparagraph (D)(4) to OAC 1501:13-12-02, which provides for such consideration. The Secretary finds that the amended regulation is no less effective than 30 CFR 817.126(a) and satisfied condition (f)(10).

15. *Condition (g).* Condition (g) required the State to amend its regulations to delete the provision in OAC 1501:13-8-01(C), exempting persons who conduct coal exploration from complying with performance standards. Ohio has deleted paragraph (C) and (D) from OAC 1501:13-8-01. The Secretary thus finds that condition (g) is satisfied.

16. *Condition (h)(1).* Condition (h)(1) required the State to amend its program to revise the bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited.

Ohio has enacted Senate Bill 323 which amends ORC Section 1513.08(A) to create the reclamation supplemental forfeiture special account (previously called the reclamation special account) and allow the Auditor of State to transfer $1 million annually (instead of the previous limit of $500,000) to replace funds spent from the account.

However, condition (h)(1) required revision to the current bonding system to provide assurance of more timely reclamation at the site of all operations upon which bond has been forfeited. Increasing the available amount of money to be annually transferred is a step toward more timely reclamation on sites upon which bond has been forfeited; however, this in itself is not an *assurance* of more timely reclamation of these sites. Ohio will have to provide assurance through an analysis of the revised bonding system to show that the system can achieve the objectives and purpose of the bonding program pursuant to SMCRA section 509(c), and ensure reclamation as contemporaneously as practicable without unreasonable delay of the postmining land use pursuant to SMCRA section 515(b)(2) and (b)(16).

The proposed amendment is approved, but the Secretary finds that it does not satisfy condition (h)(1), in that Ohio fails to provide assurance of more timely reclamation of sites upon which bond has been forfeited. However, because Ohio submitted material to satisfy this condition which the State, in good faith, believed to be adequate, the Secretary has decided to allow the State until August 8, 1983 (the date originally set for this condition) to submit new assurances. On April 8, 1983, the State was advised of the need to further amend its program to satisfy this condition. By letter dated April 27, 1983, the State agreed to do so by August 8, 1983.

17. *Condition (h)(2).* Condition (h)(2) required the State to promulgate regulations consistent with 30 CFR 800.11(b)(2), ensuring that bonds shall be filed at least 30 days prior to commencement of mining on the next incremental areas.

Ohio has added, at OAC 1501:13-7-01(B)((6)(b), a requirement that bonds be filed 30 days prior to commencement of mining on the next incremental area. The Secretary finds that the amended regulation is no less effective than 30 CFR 800.11(b)(2) and therefore condition (h)(2) is satisfied.

18. *Condition (h)(3).* Condition (h)(3) required the State to promulgate regulations consistent with 30 CFR 806.12(e)(6)(iii) assuring that an operator will not be allowed to operate without bond coverage beyond a reasonable period in order to replace coverage.

Ohio has amended OAC 1501:13-7-03(B)(5)(g) to remove the discretion to suspend the permit when the operator is without bond coverage. The amended rule now provides that the Chief "*shall* suspend all or any part of the permit until bond coverage is replaced."

The Secretary finds the amended rule is no less effective than 30 CFR 806.12(e)(6)(iii) and therefore condition (h)(3) is satisfied.

19. *Condition (i)(1).* Condition (i)(1) required the State to submit a statement of policy indicating that Ohio will develop and implement procedures for data coordination and exchange with State and Federal agencies.

Ohio has submitted a statement of policy by the Chief of the Division of Reclamation addressing data coordination and exchange as required by condition (i)(1). This condition referred to the requirements in 30 CFR 795.4, responsibilities under the Small Operator Assistance Program (SOAP). Since this condition was placed on Ohio's program, 30 CFR 795.4 has been revised and numbered 30 CFR 795.9(d), and now requires the program administrator to "develop procedures for interstate coordination and exchange of data." The Secretary finds that Ohio's policy statement of December 28, 1982, meets the requirements found in 30 CFR 795.9(d) and therefore satisfies conditions (i)(1).

20. *Condition (i)(2).* Condition (i)(2) required the State to submit promulgated regulations requiring additional information to be submitted by SOAP applicants including: (i) The anticipated termination date of the operation, (ii) a statement of coal seam thickness, and (iii) the legal right of entry.

Ohio has amended OAC 1501:13-6-03(E) to require the applicant to provide the information in (i)(2) (i), (ii), and (iii). The Secretary finds that amended OAC 1501:13-6-03(E) (7), (10)(b), and (11) are no less effective than the Federal regulations and therefore condition (i)(2) is satisfied.

21. *Condition (i)(3).* Condition (i)(3) required the State to submit promulgated regulations requiring small operators to submit a permit application within one year of receiving approved SOAP reports.

Ohio has amended OAC 1501:13-6-03(J)(1)(b) to require small operators to submit a permit application within one year of receiving approved SOAP reports. The Secretary finds that amended OAC 1501:13-6-03(J) is no less effective than 30 CFR 795.12 and therefore condition (i)(3) is satisfied.

22. *Condition (j).* Condition (j) required the State of submit a statement of policy that costs to small operators for test borings, corings, and observation wells will be paid using funds other than SOAP operational funds provided by OSM.

Ohio has submitted a policy statement that no costs to small operators for test borings, corings, and observation wells will be paid from SOAP operational grant funds provided by OSM. The Secretary finds that the policy statement is acceptable and satisfies condition (j). The Secretary notes that since this condition was placed in Ohio's program, 30 CFR 795.9 has been revised to provide that observation well drilling costs may now be paid on a case-by-case basis by operational grant funds, so that Ohio may wish to revise its policy statement in accordance with revised Federal rule.

23. *Condition (k)(1).* Condition (k)(1) required the State to enact legislation and promulgate regulations to require the pre-payment of a civil penalty in order to contest either the amount or the fact of the violation.

Am. Sub. SB 240 revises ORC section 1513.02(F) (2) and (3) to eliminate the formal hearing by the Chief so that the first opportunity for formal review of an assessment is before the Reclamation Board of Review.

ORC section 1513.02(F)(3), as amended, requires that, at the time the petition for review of the proposed assessment is filed with the Secretary of the Reclamation Board of Review, the person shall forward the amount of the penalty to the Secretary of the Board. In addition, this amendment provides for an informal assessment conference to review the amount of the penalty. The conference is to be presided over by the Chief or his appointee, excluding the inspector that issued the notice of violation or order. The proposed penalty need not be paid prior to this informal conference.

The Secretary finds that the amendments to ORC section 1513.02(F) are consistent with SMCRA section 518(c) and 30 CFR 845.18 and are approved. The amendments satisfy condition (k)(1).

24. *Condition (k)(2).* Condition (k)(2) required the State to promulgate regulations eliminating the opportunity for a *de novo* hearing or providing safeguards against abuses to the record developed at the initial hearing in an administrative appeal to the Reclamation Board of Review.

Ohio has submitted Senate Bill 240 which amends ORC section 1513.02 and sections 1513.13 to eliminate and appeal to the Chief of the Division of Reclamation on notices, orders, and decisions. The first level of review is now the Reclamation Board of Review. Thus, the opportunity for *de novo* review has been eliminated, because the only administrative hearing is now before the Board. The Secretary approves the amendment and finds that condition (k)(2) is satisfied.

Other Regulatory Program Amendments

Ohio submitted Amended Substitute Senate Bills 240 and 323 (hereinafter referred to as Am. Sub. SB 240 or 323) which amend the Ohio Revised Code (ORC). The amendments and the Secretary's findings are discussed below.

1. *ORC Section 127.16(D)(8).* Am. Sub. SB 323 allows the Chief of the Division of Relcamation to contract reclamation work with an operator mining adjacent land. This applies to State funded projects or bond forfeitures from permits issued before and during the interim program. It does not impact upon the permanent program requirements of SMCRA. Consequently, the amendment is approved.

2. *ORC Section 1513.02(A)(4): Determination of the Probable Hydrologic Consequences and State Funding for S.O.A.P.* Am. Sub. SB 323 amends this section to clarify that an applicant must request the Chief to make a determination of the probable hydrologic consequences. The present language states that the Chief shall perform the hydrologic study.

Section 507(b)(11) of SMCRA requires that the permit application contain a determination of the probable hydrologic consequences (PHC) of the mining and reclamation operations * * * so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area. Section 507(b)(15) requires a statement of the results of test borings or core samplings to be submitted. Section 507(c) of SMCRA provides that the PHC is to be performed by a qualified laboratory and the cost is to be borne by the regulatory authority, for an operator whose total annual production will not exceed 100,000 tons.

The change in ORC section 1513.02(A)(4) would require the Chief to "make a determination" of the PHC within 60 days of submission of a permit application. Although section 1513.02 does not contain a specific power to enter into contracts with qualified laboratories for the performance of the PHC, section 1501:13-6-03(G)(2) of the Ohio Administrative Code (OAC) requires the PHC to be made by a qualified lab. Furthermore, section 1501:13-6-03(A)(4)(b) directs the Chief to pay to labs or reimburse eligible applicants for PHC determinations. The Secretary finds this proposed change is not inconsistent with section 507(b)(11) of SMCRA, with the understanding that applications may not be considered complete until they include the data and the PHC determination required by sections 507(b)(11) and 507(b)(15).

In addition, Ohio's Am. Sub. SB 323 deletes a provision authorizing the Chief to transfer up to $500,000 from the unreclaimed land special account to cover the cost of making PHC determinations and performing chemical analyses of test borings or core samplings for small operators who have a total annual production that does not exceed one hundred thousand tons. The Secretary finds this deletion is not inconsistent with section 507(c) of SMCRA, with the understanding that Federal funds may be used only to perform work for eligible operators under section 507(c), and may not be used for any other purpose.

3. *ORC Section 1513.02(A)(5): Authority to use up to $1 Million.* Am. Sub. SB 323 amends ORC section 1513.02(A) by adding subparagraph (5), which will allow the Chief to transfer up to $1 million annually from the coal mining and administration and reserve special account created in ORC section 1513.181 to the Reclamation Supplemental Forfeiture Special Account created in ORC section 1513.08.

In light of the number of present and potential reclamation defaults and bond forfeitures, the Secretary conditioned his approval of the Ohio permanent program, as stated in 30 CFR 935.11(h)(1), on Ohio amending its program to revise the current bonding system to provide assurance of more timely reclamation at the site of operations on which bond has been forfeited. While raising the amount available annually will reduce the reclamation backlog, the State must still demonstrate to the Secretary that the $1 million amount transferred annually into the Reclamation Supplemental Forfeiture Special Account provides the assurance of more timely reclamation on all forfeited operations.

The change from $500,000 to $1 million is not in conflict with SMCRA, but in itself does not satisfy condition 30 CFR 935.11(h)(1). The condition will not be removed until the State demonstrates the effect of the changed amount. (See also discussion on condition (h)(1)).

4. *ORC Section 1513.07(B)(2) (d) and (e): Permits.* Am Sub. SB 323 amends ORC section 1513.07(B)(2)(d) by requiring the applicant to provide a list of persons responsible for ensuring compliance with the requirements of the surface mining chapter. ORC section 1513.07(B)(2)(e), as amended by Am. Sub. SB 323, expands the provision to be more specific, wherein the applicant, owners, and managers must state whether they were ever owners or managers of another business entity that has had a permit suspended, revoked, or forfeited. This amendment is consistent with the requirements of SMCRA section 507(b) (4) and (5) and is approved.

5. *ORC Section 1513.07(B)(2)(q): Permits.* Am. Sub. SB 323 amends ORC section 1513.07(B)(2)(q) to include the requirement for liability insurance which had been covered under repealed ORC section 1513.06 (annual license requirements). The language of ORC section 1513.07(B)(2)(q) also includes notification of lapses in insurance policy, and allows the Chief to suspend permits until proper coverage is obtained. This amendment is consistent with SMCRA section 507(f) and is approved.

6. *ORC Section 1513.07(E): Permits.* ORC section 1513.07(E) has been amended by Am. Sub. SB 323 to: require a statement in the permit application

that any civil penalties owed to the state for a violation and not subject to an appeal have been paid; require the Chief to deny a permit if he finds that persons in control of the company have ever forfeited a coal mining bond anywhere in the United States or materially failed to comply with ORC Chapter 1513; and provide that the Chief may deny a permit if persons in control of the company have had a permit suspended or revoked in the United States.

The amendments to ORC section 1513.07(E)(3) are consistent with SCMRA section 510 and are approved.

7. *ORC Section 1513.08(A): Bonds.* Am. Sub. SB 323 amends ORC section 1513.08(A) to provide that the bond shall cover areas of land affected by mining within, or immediately adjacent to, the permit area. This change will allow bond to be applied to any areas which may be affected outside the permit area, which was not previously allowed, with the result that surety companies claimed that they were not responsible for areas affected outside the permit during forfeiture proceedings. This amendment, which was not in response to a condition placed on the Ohio program, is found to be in accordance with SMCRA, and is, therefore, approved.

8. *ORC Section 1513.17: Need for permit.* Am. Sub. SB 323 adds the word "knowingly" to the violations listed in ORC section 1513.17(B), (C), and (D), and requires that strict criminal liability can be imposed. This change results in penalties no less stringent than those in SMCRA section 518(e) and is approved.

9. *ORC Section 1513.18: State special revenue fund.* Am. Sub. SB 323 amends section 1513.18 so that the Chief is authorized to contract with landowners, operators mining under valid permits, or contractors hired by the surety to complete reclamation without advertising for bid. This allows the Chief to contract for bond forfeiture work with anyone, including the operator who defaulted if the defaulted operator is the contractor hired by the surety. The provision is not inconsistent with SMCRA, and the amendment is approved.

10. *ORC Section 1513.27: Reclaiming damage to adjacent property. Section 1513.28: Reclamation grants, criteria contracts with applicants, Section 1513.32: Agreements.* Am. Sub. SB 323 amended ORC sections 1513.27, 1513.28, and 1513.32 regarding the administrative operation of the State "unreclaimed lands special account" which receives no Federal funding. As this account is entirely State-funded and separate from the approved abandoned mine land reclamation program for the State of Ohio, these proposed changes are amendments which are not inconsistent with SMCRA.

11. *ORC Section 1513.99: Penalties.* Am. Sub. SB 323 amends ORC section 1513.99, to incorporate ORC sections 1513.17(B), (C), (D) and (E) into the penalty section. These provisions are as follows:

(1) ORC section 1513.17(B)—mining without a permit;

(2) ORC section 1513.17(C)—knowingly violate a permit condition or exceed the limits of a permit;

(3) ORC section 1513.17(D)—knowingly fail to comply with a Chief's Order;

(4) ORC section 1513.17(E)—knowingly violate a requirement of ORC Chapter 1513 not specifically mentioned in the section.

This amendment was made in conjunction with the amendment to sections 1513.17(B), (C), (D), and (E). The amendment provides penalties that are no less stringent than the requirements of SMCRA section 518 and is approved.

12. *ORC Section 1513.02(A)(5): Authority to issue rules.* Am. Sub. SB 240 adds ORC section 1513.02(A)(5) which authorizes the Chief to receive, administer, and expend moneys from Federal agencies to implement the program. The amendment is not inconsistent with SMCRA and is approved.

13. *ORC Section 1513.02(D) (1) and (2): Authority to issue rules.* Am. Sub. SB 240 amends ORC section 1513.02(D) (1) and (2) to authorize the Reclamation Board of Review to modify, vacate, or terminate a cessation order. This authority is consistent with the requirements of SMCRA section 525(b) and is approved.

The amendment to ORC section 1513.02(D)(2) allows the State, by reference, to have the same requirements on abatement periods as 30 CFR Part 843. This is consistent with the Federal regulations, and is approved.

14. *ORC Section 1513.02 (I) and (J): Hearing Officers.* Am. Sub. SB 240 amends ORC section 1513.02 (I) and (J) by removing requirements to submit violation information required in ORC section 1513.06 (repealed) and eliminating the requirement for the Chief to appoint hearing officers. Both changes were due to other changes in Am. Sub. SB 240 and are not inconsistent with SMCRA, so they are approved.

15. *ORC Section 1513.05: Reclamation Board of Review.* Am. Sub. SB 240 amends ORC section 1513.05 by requiring the Reclamation Board of Review to appoint hearing officers and to adopt rules governing procedure of appeals. These amendments are not inconsistent with SMCRA and are approved.

16. *ORC Section 1513.06: Licenses.* Am. Sub. SB 240 repeals ORC section 1513.06, which required a license to conduct a coal mining and reclamation operation. All information required by this section is now required in a permit application. This amendment is not inconsistent with SMCRA and is approved.

17. *ORC Section 1513.07: Permits.*

(1) ORC section 1513.07(A)(1) is amended by Am. Sub. SB 240, in that a permit fee will not be collected for areas covered by an interim program permit if the same areas are contained in an application for a permanent program permit. Section 507(a) of SMCRA requires that an application fee may be less than but not exceed the actual or anticipated costs of reviewing, administering, and enforcing such permit. The Ohio amendment is not inconsistent with SMCRA section 507(a) and is approved.

(2) ORC section 1513.07(B)(2)(n)(i) is amended by Am. Sub. SB 240 to delete, "or potentiometric surface; and the anticipated final configuration of the water table or potentiometric surface." Since this language is more extensive than the requirements of Section 507(b)(14) of SMCRA, the Secretary finds this section of the Ohio Revised Code remains consistent with the requirements of SMCRA.

(3) ORC section 1513.07(B)(2)(q) is amended by Am. Sub. SB 240 to require the business phone number of the applicant. This amendment is approved.

(4) ORC section 1513.07(B)(6) is amended by Am. Sub. SB 240 to remove the requirement to include a copy of the license with the application for a permit. (See findings under ORC section 1513.06.) The amendment is approved.

(5) ORC section 1513.07(B) is amended by Am. Sub. SB 240 to remove the reference to a license application. (See findings under ORC section 1513.06.) The amendment is approved.

(6) ORC section 1513.07(E)(3) is amended by Am. Sub. SB 240 to require that the State regulatory authority (SRA) provide applicants with a listing for the past three years of all notices of violations of Chapter 1513 of the Revised Code. Section 510(e) of SMCRA requires the applicant to file such a listing with the application. The Secretary finds that it is not inconsistent with SMCRA to have the SRA furnish a listing of violations of Chapter 1513. It should be noted that the applicant would still be responsible for furnishing a listing of violations from other agencies as required by the approved

State program. The amendment is approved.

(7) ORC section 1513.07(I) (3), (4) and (5) is amended by Am. Sub. SB 240 to change the appeal procedure on the Chief's decision on a permit application. The appeal will be heard by the Reclamation Board of Review instead of the Chief or his representative. See finding under ORC section 1513.13 (A), (B), and (C). The amendment is not inconsistent with SMCRA section 525 and is approved.

(8) Am. Sub. SB 240 amends ORC section 1513.07(J) by removing the reference to an annual license. This amendment is not inconsistent with SMCRA and is approved.

18. *ORC Section 1513.074: Adjacent area permit.* Am. Sub. SB 240 adds ORC section 1513.074 to classify a permit application adjacent to existing permits as an adjacent area permit application and to allow the applicant to incorporate by reference current information contained in the application for the original permit.

Section 511(a)(3) of SMCRA requires that any extension to the permit area, if not an incidental boundary revision, must be made by application for another permit. ORC section 1513.074 meets this requirement by assuring that the operator supplements information available for public inspection with additional information and makes the application subject to the standards for new applications.

The Secretary finds that this amendment is consistent with SMCRA section 511(a)(3) and is approved.

19. *ORC § 1513.13 (A)(1), (B) and (C): Appeal rights.* (1) The amendment to ORC section 1513.13(B) concerns elimination of the appeal to the Chief and establishes the Reclamation Board of Review to hear appeals. ORC section 1513.13(B)(3) allows a decision from appeal on a bond release to be made within 60 days. SMCRA does not establish a 60-day limit, but the Secretary finds that this is reasonable as long as the bond is not released because of the Board's failure to render a decision within the time period. The amendments to ORC section 1513.13(B) are consistent with SMCRA sections 514, 520, and 525 and are approved.

(2) Am. Sub. SB 240 amends ORC section 1513.13(A)(1) to allow any person to appeal any notice, order, or decision by the Chief by appealing to the Reclamation Board of Review. It eliminates the appeal to the Chief, and requires notice of appeal to be filed within 30 days after a notice, order, or decision is issued, which is a change from "receipt thereof". The amendment gives the Reclamation Board of Review exclusive original jurisdiction to hear and decide such appeals.

The change of time for appeal is inconsistent with SMCRA section 525(a)(1), which provides for appeal within 30 days from receipt of a notice or order. Since a notice, order, or decision may be mailed to an operator or other party, the change is significant in that it shortens the time in which the operator or other party may appeal. Therefore, the Secretary cannot approve this amendment. This deficiency could be corrected by an Attorney General's opinion or a policy statement. The other changes are consistent with SMCRA Section 525 and are approved.

(3) The amendment to ORC section 1513.13(C) eliminates the requirements concerning hearings by the Chief and temporary relief. It provides that the Chairman of the Board may, under conditions he prescribes, grant temporary relief he consider appropriate pending final determination of an appeal if (1) all parties to the appeal have been notified or given an opportunity to be heard, (2) the person requesting relief shows that there is a high likelihood that he will prevail on the merits, and (3) the relief will not adversely affect public health or safety or cause significant imminent environmental harm.

Section 525(c)(1) of SMCRA requires that a hearing be held in the locality of the permit area on the request for temporary relief in which all parties are given an opportunity to be heard. The amendment to ORC section 1513.13(C)(1) does not require that the hearing be in the locality of the permit area. This omission could hamper an operator or other party in their attempt to obtain temporary relief.

The Secretary finds that the amendment to ORC section 1513.13(C)(1) is not consistent with section 525(c)(1) of SMCRA in that it omits a requirement that the temporary relief hearing be held in the locality of the permit area. This deficiency could be corrected by a policy statement or an Attorney General's opinion.

(4) ORC section 1513.13(C), as amended by Am. Sub. SB 240, allows the Chairman of the Reclamation Board of Review to make determinations concerning the granting of temporary relief. The decision of the Chairman on temporary relief cannot, however, be appealed, because an Ohio appellate court has determined that appeals to it are limited to decisions of the Board. *Barack* v. *Call*, Seventh District Court of Appeals, Case No. 83-B-1 (1983). Thus, decisions of the Chairman not to grant temporary relief cannot be reviewed by an appellate court until the Board renders a decision on the merits.

The amendment is not consistent with SMCRA section 526, which provides for a judicial appeal of the decision relating to temporary relief.

Therefore, the Secretary finds that the proposed amendments to ORC 1513.13(A)(1) and 1513.13(C) are not fully consistent with SMCRA and hereby imposes an additional condition of program approval.

On April 8, 1983, the State was advised of the need to amend ORC 1513.13(A)(1) and 1513.13(C) so that these provisions are consistent with SMCRA Sections 525 (a)(1), (c)(1) and 526(c). By letter dated April 27, 1983, the State agreed to so amend its program by August 8, 1983. In the interim, Ohio has agreed as a matter of policy: (1) Not to challenge the time limit on an appeal brought within 30 days of the receipt of a notice, order or decision; (2) that hearings on requests for temporary relief will be held in the locality of the permit area; and (3) that all requests for temporary relief and subsequent decisions will be acted upon by the Reclamation Board of Review.

20. *ORC Section 1513.14: Review of orders by Board of Review and courts.* Am. Sub. SB 240 amends ORC section 1513.14 by removing the provision concerning appeal of decisions by the Chief and vests the exclusive jurisdiction on appeals in the Board of Review. This change is not inconsistent with section 525 of SMCRA.

However, the State must provide for appeal of the Chairman's decision on temporary, relief. See finding concerning ORC 1513.13.

21. *ORC Section 1513.16(F): Reclamation standards.* Am. Sub SB 240 makes the following changes to ORC section 1513.16(F):

(1) ORC section 1513.16(F) is amended to create two actions to be taken on a bond: "reduction" and "release." If only a certain amount of the bond is being reduced, it is a reduction. At the completion of the liability period, the bond is then "released." A bond is reduced upon completion of backfilling and regrading (phase one) and upon the beginning of the liability period (phase two) after resoiling and the establishment of vegetation.

The change from the phrase "bond release" to "bond reduction" for phase one and two release eliminates the requirement that the operator advertise and give public notice to allow for public participation and the right to file written objections concerning those phases. The result is that the Chief could release as much as 85% of the bond without any public notice or opportunity for public comment. This amendment is in conflict with SMCRA section 519(a), which clearly states that:

* * *the permittee may file a request with the regulatory authority for release of all or part of a performance bond or deposit * * *. The operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.

The "bond reduction" is still a release of the bond liability of the permittee, so that "bond reductions" are nevertheless "bond releases" as referred to in SMCRA section 519 and must meet the same requirements concerning public notice and the right to file written objections as required by section 519.

The Secretary finds that SMCRA does not allow for bond reductions as provided for by ORC section 1513.16(F), and therefore, conditions his approval of this amendment on a further revision to ORC section 1513.16(F).

On April 8, 1983, the State was advised of the need to amend ORC section 1513.16(F) to meet this condition by revising the ORC to require that all bond reductions must meet the same public participation requirements as bond releases consistent with section 519 of SMCRA. By letter dated April 27, 1983, the State agreed to amend its program by August 8, 1983. In the interim, Ohio agreed not to reduce or release any portion of a bond unless the bond release requirements specified in ORC section 1513.16(F) have been met.

(2) Revised ORC section 1513.16(F) also allows for an informal conference to be held by the Chief, if requested by interested parties, on bond releases. The conference proceedings are to be recorded unless waived by all parties. The revision eliminates the formal hearing by the Chief and directs any appeals from the conference to the Reclamation Board of Review. This is consistent with SMCRA section 519(g) and is approved.

(3) Amended ORC section 1513.16(F) eliminates resoiling as a requirement for approval of the first phase of bond reduction and reduces from 60% to 50% of the total bond to be released upon approval of the first phase of reclamation. Resoiling is now required as part of the second phase of reclamation before reduction. This provision is consistent with SMCRA section 519(c)(1) and (2) and is approved.

(4) The phase two reduction is also limited, in ORC section 1513.16(F), to 35% of the original bond deposited. Limiting the phase two bond release to 35% is not inconsistent with section 519(c) of SMCRA because, although it places an upper limit on the amount of the bond to be released, the Chief must still determine the amount of the bond which would be necessary for a third party to re-establish vegetation. This amendment is consistent with SMCRA and is approved.

22. *ORC Section 1513.16(H): Reclamation standards.* Am. Sub. SB 240 adds section (H) to ORC section 1513.16. This section gives the State the statutory authority for reclamation standards and procedures for bond release for permits issued prior to the effective date of revised Chapter 1513 for the permanent program, September 1, 1981. The standards and procedures had been deleted in that legislation by error, thereby requiring that interim program permits meet permanent bond release and forfeiture criteria. The addition of paragraph (H) reinstates interim program standards in permits issued prior to September 1, 1981. This change is not inconsistent with SMCRA and is approved.

23. *ORC Section 1513.131: Adjudicatory hearings.* Am. Sub. SB 240 amends ORC section 1513.131 to assign the duties of the Reclamation Board of Review to a hearing officer. This amendment is not inconsistent with SMCRA and is approved.

Abandoned Mine Land Reclamation Plan

ORC Section 1513.37: Abandoned mine special account. Am. Sub. SB 323 revises ORC section 1513.37(D)(2) to require the State board on unreclaimed strip mined lands to review all applications for administrative costs, imminent hazards, or emergency projects before the Chief may make application for such funds to the Secretary. This change is not in conflict with SMCRA and is approved, although the Secretary notes that any proposed projects must meet the criteria established in the approved Title IV program for Ohio.

Am. Sub. SB 323 also renumbers paragraph D(4) as D(5), while leaving the wording unchanged. A new paragraph D(4) is inserted to require the review and approval of the State board on unreclaimed strip mined lands of all specific reclamation project proposals prior to any expenditures of funds. This change does not conflict with SMCRA, and is approved, although the Secretary notes that any proposed projects using federal grant funds must meet the criteria established in the approved Title IV program for Ohio.

Am. Sub. SB 323 adds a new paragraph under section (J), which would require all contractors performing reclamation work under this section to pay its workers at the greater of their regular rate of pay or the average wage rate paid in the State for the same or similar location by private companies doing their own reclamation work. This amendment is not inconsistent with SMCRA and is approved.

Non-Substantive Amendments

Ohio has made numerous revisions to the ORC and OAC to make non-substantive, primarily editorial, changes. The Secretary finds the corrections consistent with SMCRA and 30 Chapter VII.

Effect of Secretary's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under the Act unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Secretary. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the State program, the Secretary will recognize only the statutes and regulations approved by him, and will require the enforcement by the State of only such provisions. Therefore, the provisions that the Secretary is approving today will take effect today for purposes of the State program. Those provisions the Secretary has not approved today or has affirmatively disapproved may not be implemented by the State in any manner until such time as the Secretary approves them.

IV. Public Comments

Comments were solicited from Federal agencies pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i). Of those agencies invited to comment, responses were received from the following: Bureau of Mines, Fish and Wildlife Service, Farmers Home Administration, Mine Safety and Health Administration, Environmental Protection Agency, Soil Conservation Service, and Corps of Engineers. The responses either offered no comments or offered ones directed to aspects of the approved Ohio program not included in the present rulemaking. The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(b)(10)(i).

No other comments were received in response to the January 21, 1983 **Federal Register.**

V. Approval

Accordingly, conditions (b), (d), (f)(1)–(f)(6), (f)(8)–(f)(10), (g), (h)(2)–(h)(3), (i)(1)–(i)(3), (j), (k)(1) and (k)(2) are hereby removed and 30 CFR Part 935 is amended to: (1) Indicate approval of the Ohio regulatory program and AML amendments; (2) modify condition (f)(7); (3) extend the time by which Ohio must satisfy conditions (f)(7), (k)(3), (k)(4), and (k)(5); and (4) impose two new conditions of program approval.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 935 of Title 30 is amended as set forth herein.

Dated: May 9, 1983.

Daniel N. Miller Jr.,

Assistant Secretary for Energy and Minerals.

PART 935—OHIO

1. 30 CFR 935.10 is revised to read as follows:

§ 935.10 State regulatory program approval.

The Ohio State regulatory program as submtted on February 29, 1980, and resubmitted on January 22, 1982, is conditionally approved, effective August 16, 1982. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in Ohio for all surface coal mining and reclamation operations on non-Indian and non-Federal lands. Only surface coal mining and reclamation operations on non-Indian and non-Federal lands shall be subject to the provisions of the Ohio permanent regulatory program. Copies of the approved program, as amended, are available at:

(a) Division of Reclamation, Ohio Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio 43224; Telephone: (614) 265–6633.

(b) Office of Surface Mining, Room 5315, 1000 L Street, N.W., Washington, D.C. 20240; Telephone: (202) 343–4728.

2. 30 CFR 935.11 is amended by removing and reserving paragraphs (b), (d), (f)(1) through (f)(6), (f)(8) through (f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1), and (k)(2).

3. 30 CFR 935.11 is amended by revising paragraph (k)(3), (k)(4), and (k)(5) by substituting "August 8, 1983" for "February 8, 1983" each time it appears.

4. 30 CFR 935.11 is amended by revising paragraph (f)(7) and adding paragraphs (l) and (m) as follows:

§ 935.11 Conditions of State regulatory program approval.

* * * * *

(f) Steps will be taken to terminate the approval found in § 935.10:

* * * * *

(7) Unless Ohio submits to the Secretary by August 8, 1983, copies of promulgated regulations deleting the word "substantially" from OAC 1501:13–9–15(E)(5) to establish the beginning of the period of extended responsibility consistent with 30 CFR 816.116(b)(1).

* * * * *

(l) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of fully enacted legislation amending ORC sections 1513.13(A)(1) and 1513.13(C) to provide that:

(1) The time for filing a notice of appeal is within 30 days after receipt of a notice, order or decision; (2) a hearing on a request for temporary relief shall be held in the locality of the permit area; and (3) temporary relief decisions by the Chairman of the Reclamation Board of Review are judicially reviewable. Until the condition is satisfied, Ohio has agreed as a matter of policy not to challenge the time limit on an appeal brought within 30 days of the receipt of a notice, order or decision; that hearings on requests for temporary relief will be held in the locality of the permit area; and that all requests for temporary relief and subsequent decisons will be acted upon by the Reclamation Board of Review.

(m) Steps will be taken to terminate the approval found in § 935.10 unless Ohio submits to the Secretary by August 8, 1983, copies of enacted legislation amending ORC section 1513.16(F) to require that all bond reductions must meet the same public participation requirements as bond releases, consistent with Section 519 of SMCRA. Until the condition is satisfied, Ohio has agreed not to reduce or release any portion of a bond unless the bond release requirements specified in ORC section 1513.16(F) have been met.

5. Part 935 is amended by adding a new § 935.15 as follows:

§ 935.15 Approval of regulatory program amendments.

(a) The following amendment was approved effective January 17, 1983: Ohio revised rule OAC 1501:13–1–01, adopted September 16, 1982.

(b) The following amendments were approved effective January 31, 1983: Ohio revised rules OAC 1501:13–1–07, 1501:13–4–03, 1501:13–4–04, and 1501:13–4–05, adopted November 4, 1982.

(c) The following amendments were approved effective May 24, 1983:

(1) Ohio revised code (ORC), as amended by SB 240 and 323, adopted March 18, 1983, with the following exceptions: ORC Sections 1513.01(G)(2), 1513.07(B)(2)(n), 1513.13(A)(1), 1513.13(C), 1513.16(A)(10)(b)(ii) and 1513.16(F).

(2) Ohio revised rules, submitted January 6, 1983.

(3) Ohio policy statements dated December 28, 1982.

6. Part 935 is amended by adding a new § 935.25 as follows:

§ 935.25 Approval of AML plan amendments.

(a) The following amendments were approved effective May 24, 1983:

(1) Ohio revised code (ORC) section 1513.37(D)(2), (D)(4), (D)(5) and (J), adopted March 18, 1983.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

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