

by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1992.

Carl C. Close,

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 935—OHIO

1. The authority citation for part 935 continues to read as follows:

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

2. In § 935.15, a new paragraph (ccc) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

(ccc) The following amendment to the Ohio permanent regulatory program, as submitted by letter dated November 16, 1987, is approved with the exceptions identified herein, effective April 13, 1992: Amendment Number 32 which consists of revisions to the Ohio Revised Code (ORC) at 1513.07 paragraphs (E)(5) and (E)(6) concerning the discretionary denial of permits and at 1513.16 paragraph (F)(3)(b) concerning the Phase II bond release for all or part of an area under a permit. The following revisions to the ORC and the Ohio Administrative Code (OAC) regarding the creation of a coal mining performance bond fund as submitted by letter dated November 16, 1987, and with subsequent revisions are not being approved: ORC 1513.081 and 1513.08(B) and OAC 1501:13-7-09.

[FR Doc. 92-8455 Filed 4-10-92; 8:45 am]

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Revised Program Amendment Number 46 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise four Ohio administrative rules and one section of the Ohio Revised Code to be consistent with Federal regulations regarding the extraction of coal incidental to the extraction of other minerals.

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including 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* (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated February 7, 1990 (Administrative Record Number OH-1383), the Deputy Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio), that OSM had recently promulgated new Federal regulations concerning exemptions for coal extraction incidental to the extraction of other minerals. The Deputy Director required Ohio to modify its regulatory

program to remain consistent with the new Federal requirements.

By letter dated April 5, 1990 (Administrative Record Number OH-1384), Ohio responded with questions concerning the Deputy Director's February 7, 1990, letter. OSM provided responses to Ohio's questions by letter dated May 1, 1990 (Administrative Record Number OH-1385).

By letter dated May 31, 1990 (Administrative Record Number OH-1386), Ohio submitted a schedule for submitting an amendment to the Ohio program concerning incidental coal extraction. By letter dated August 2, 1990 (Administrative Record Number OH-1387), Ohio submitted additional questions concerning OSM's new regulations on incidental coal extraction. OSM responded to Ohio's second set of questions by letter dated September 6, 1990 (Administrative Record Number OH-1390).

By letter dated October 12, 1990 (Administrative Record Number 1393), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Ohio Program Amendment Number 46. The amendment proposed changes to three Ohio administrative rules and one section of the Ohio Revised Code regarding the extraction of coal incidental to the extraction of other minerals.

On October 31, 1990, OSM published a notice in the *Federal Register* (55 FR 45809) announcing receipt of Ohio's Program Amendment Number 46 and inviting public comment on its adequacy. The comment period closed on November 30, 1990. The public hearing scheduled for November 26, 1990, was not held as no one requested an opportunity to testify.

By letter dated March 13, 1991 (Administrative Record Number OH-1478), OSM provided Ohio with its questions and comments about the proposed amendment. On April 4, 1991, representatives of Ohio and OSM discussed this letter in a telephone conversation (Administrative Record Number OH-1500).

By letter dated April 15, 1991 (Administrative Record Number OH-1507), Ohio provided its responses to OSM's March 13, 1991, letter and submitted Revised Program Amendment Number 46. In the revised amendment, Ohio reiterated many of the revisions proposed in the initial version of Program Amendment Number 46. In addition, Ohio proposed further revisions to one rule which was not amended in the original submission of the amendment. OSM announced receipt

of the proposed revisions in the May 22, 1991, *Federal Register* (56 FR 23531) and in the same notice reopened the public comment period. The comment period closed on June 21, 1991. The public hearing scheduled for June 17, 1991, was not held as no one requested an opportunity to testify.

By letter dated July 29, 1991 (Administrative Record Number OH-1551), OSM sent its comments to Ohio regarding the proposed revised amendment. In response to OSM's letter,

on August 30, 1991 (Administrative Record Number OH-1572), Ohio submitted further revisions to Revised Program Amendment Number 46. OSM announced receipt of the final proposed revisions in the September 25, 1991, *Federal Register* (56 FR 48470) and in the same notice reopened the public comment period. The comment period closed on October 25, 1991. The public hearing scheduled for October 21, 1991, was not held as no one requested an opportunity to testify.

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 Ohio program. Revisions which are not discussed below correct paragraph letter notations or make minor language changes to improve the clarity of the rules.

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

State regulation	Subject	Federal counterpart
OAC 1501:13-4-16(A)	Requirements for exemption	30 CFR 700.11(a)(4), 702.11(a)(1), (a)(2).
OAC 1501:13-4-16(B)(2), (B)(3), (B)(4)	Definitions	30 CFR 702.5(b), (c), (d).
OAC 1501:13-4-16(C)	Application requirements and procedures	30 CFR 702.11(b), (c), (d).
OAC 1501:13-4-16(D)(1) through (16), except (10)	Contents of request for exemption	30 CFR 702.12(a) through (p), except (j).
OAC 1501:13-4-16(E)	Exemption determination	30 CFR 702.11(e)(1), (e)(2), (e)(3).
OAC 1501:13-4-16(F)	Administrative review	30 CFR 702.11(f)(1), (f)(2).
OAC 1501:13-4-16(G)(1), (G)(2)(a), (G)(2)(b)	Requirements for exemption	30 CFR 702.14(a)(1), (a)(2), (a)(3), (b)(1), (b)(2).
OAC 1501:13-4-16(H)	Conditions of exemption	30 CFR 702.15(a) (b), (c).
OAC 1501:13-4-16(I)	Stockpiling of materials	30 CFR 702.16(a), (a)(1), (a)(2), (b)(1), (b)(2) through (b)(2)(ii), (b)(3), (b)(4).
OAC 1501:13-4-16(J)(2)	Public availability of information	30 CFR 702.13(b).
OAC 1501:13-4-16(K)(1), (K)(3), (K)(4)	Reporting requirements	30 CFR 702.18(a)(1), (a)(3) through (a)(3)(ii), (b) through (b)(6).
OAC 1501:13-5-03(A)	Revocation of exemption	30 CFR 702.17(a).
OAC 1501:13-5-03(B)	Revocation of exemption	30 CFR 702.17(b).
OAC 1501:13-5-03(C)(2), (C)(3)	Revocation of exemption	30 CFR 702.17(c)(2), (c)(3).
OAC 1501:13-5-03(D)	Revocation of exemption	30 CFR 702.17(d)(1), (d)(2), (d)(3).
OAC 1501:13-14-01(H)	Inspection of operations	30 CFR 702.15(d), (e) through (e)(3), (f).

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

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

1. OAC 1501:13-1-02(S)(1)(a) and ORC 1513:01(G)(1)(a), Definitions

Ohio is proposing to revise the statutory definition of "operation" or "coal mining operation" at ORC 1513:01(G)(1)(a) by eliminating the phrase "during the year" and language regarding the use of minerals extracted for fill material. Ohio also proposes to revise the rule definition of "coal mining operation" at OAC 1501:13-1-02(S)(1)(a) to delete the phrase "during the year" and to eliminate language also proposed for deletion from the statutory definition regarding the use of minerals extracted for fill material. The proposed changes do not render less effective that portion of the amendment concerning the extraction of coal incidental to the extraction of other minerals. Therefore, the Director finds that the revised portions of the Ohio definitions are no

less stringent than SMCRA at 30 USC 1291(28) and no less effective than the Federal rule at 30 CFR 700.5 regarding the extraction of coal incidental to the extraction of other minerals.

2. OAC 1501:13-4-16(B)(1), Definitions

Ohio is proposing to add the definition of "cumulative measurement period." The Federal definition at 30 CFR 702.5(a)(1) states that "[f]or purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use" one of the dates identified at subsections (i) or (ii). Ohio's proposed rule does not have a counterpart to the quoted language. In a March 13, 1991, letter (Administrative Record Number OH-1478), OSM asked Ohio if it would require an operator to consistently use the same date. By letter dated April 15, 1991 (Administrative Record Number OH-1507), Ohio clarified that it would expect an operator to consistently use the beginning date of the cumulative measurement period when updating the initial calculations annually as required in the reporting requirements. In addition, in those cases where an incidental coal operator annually

recalculates the cumulative production and revenues, Ohio would require the operator to use production and revenue data calculated from the same beginning date from year to year. Because Ohio has stated in its letter of April 15, 1991, that it will require operators to consistently use the beginning date of the cumulative measurement period and because the remainder of the definition is substantively identical to the Federal definition, the Director finds that the proposed rule is no less effective than the Federal rule at 30 CFR 702.5(a)(1).

3. OAC 1501:13-4-16(B)(5), Definitions

Ohio is proposing to add the definition of "other minerals." The Federal definition at 30 CFR 702.5(e) defines "other minerals" as any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material. Ohio's proposed definition of "other minerals" would mean any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material, or any material mined and used on-site in the construction of waste disposal facilities. The inclusion of "or any material mined and used on-site in the construction of waste disposal facilities" does not

change the intended meaning of the definition of "other minerals" which requires that the substance be mined for its commercial mineral value. This additional exclusion from the definition further limits what can be a commercially valuable substance for exemption purposes. The Director, therefore, finds that the proposed definition of "other minerals" at OAC 1501:13-4-18(B)(5) is no less effective than the Federal definition at 30 CFR 702.5(e).

4. OAC 1501:13-4-16(D)(10), Request for Exemption

Ohio is proposing that the request for exemption shall include stratigraphic cross-sections showing relative position and approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of the innerburden and overburden. The corresponding Federal rule at 30 CFR 702.12(j) requires the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities. Ohio holds that their terms "innerburden" and "overburden" are synonymous with the Federal phrase "other than other minerals."

(Administrative Record No. OH-1393). The Director finds, therefore, that the proposed State rule is no less effective than its Federal counterpart because "innerburden" and "overburden" are not classified as other minerals to be extracted for commercial use or sale, which was meant by the term "other than other minerals."

5. OAC 1501:13-4-16(J)(1), Public Availability of Information

Ohio is proposing that all information submitted to the Chief shall be made available in accordance with Ohio's public records statute, Ohio Revised Code (ORC), section 149.43. The remainder of paragraph (J)(1) is substantively identical to 30 CFR 702.13(a). Paragraph (B) of section 149.43 provides that "[a]ll public records shall be promptly prepared and made available for inspection to any person at all times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time."

The Federal regulation at 30 CFR 702.13(a) provides that "all information * * * be made immediately available for public inspection and copying * * *." The approved Ohio rules at OAC 1501:13-1-10 (A) and (B) concerning the availability of records require that documents be made

immediately available to the public. The preamble to the Federal regulation states that the word "immediately" was added to the Federal rule to ensure the timely availability of the application (54 FR 52104, December 20, 1989). Ohio has stated that the proposed rule is consistent with approved OAC 1501:13-1-10, which requires information to be made immediately available to the public. Thus, Ohio's proposed rule with its cross-reference to ORC 149.43, which requires the information to be promptly available to the public, satisfies the Federal rule requirement that the information be timely available. The Director finds, therefore, that the proposed rule is no less effective than the Federal rule at 30 CFR 701.13(a).

6. OAC 1501:13-4-16(K)(2), Reporting Requirements

Ohio is proposing that the cumulative measurement period shall end on the anniversary of the date of issuance of the surface mining permit. The rule would also require that the annual report be filed no later than 30 days after each anniversary date. In some instances, the initial report in Ohio will be due in less than a year, and in some instances the initial report will be due within time frames prescribed in OSM's December 1989, final rule. To avoid confusion in the future, Ohio "will require the simultaneous submittal of the surface mining permit and the request for exemption for incidental coal extraction." (Administrative Record Number OH-1507).

Ohio is a primacy State and, as such, the actual dates Ohio uses for reporting purposes will not be the same as those stated in the Federal rules, which for the most part was April 1, 1990. The Federal rules were not intended to apply to activities that occurred prior to the effective date of a State program amendment (54 FR 52094). Thus, for annual reporting purposes, Ohio's use of the anniversary date of the issuance of the surface mining permit will still fulfill the purpose of 30 CFR 702.18. That is, to enable "the regulatory authority to evaluate compliance of the operation with the exemption criteria on an annual basis" (54 FR 52096). The Director finds that the proposed rule is no less effective than the Federal rules at 30 CFR 702.5(a) and 702.18(a)(2).

7. OAC 1501:13-5-03(C)(1), Revocation of Exemption

Ohio is proposing this paragraph to provide that the Chief shall immediately notify the operator and any person who submitted comments regarding the request for exemption if the Chief will revoke the exemption. The Chief shall

also immediately notify the operator and any person who submitted comments if a decision is made not to revoke an exemption. The counterpart Federal regulation at 30 CFR 702.17(c)(1) states that the regulatory authority shall "immediately notify the operator and any intervenors" in the application process. OSM included the notice requirements in the Federal regulation to allow adversely affected persons to seek administrative review. Ohio has determined that those adversely affected persons who comment on the application for exemption are intervenors and must receive notice of decisions to revoke or not to revoke an incidental coal exemption as required under 30 CFR 702.17(C)(1). Intervenors are not defined in the Federal rules. The Director finds that the proposed rule satisfies the notice requirements and is, therefore, no less effective than the Federal rule at 30 CFR 702.17(c)(1).

C. Revision to Ohio's Regulations with no Corresponding Federal Regulations

1. OAC 1501:13-4-16

Ohio is proposing to include an introductory paragraph to OAC 1501:13-4-16. This introductory paragraph discusses the purpose of the rule and the general nature of the restrictions on exemptions granted under the rule of extraction of coal incidental to the extraction of other minerals. This statement of purpose is simply a summary of background information and does not affect the implementation of this rule. The Director, therefore, finds that inclusion of this introductory paragraph under OAC 1501:13-4-16 is not inconsistent with the requirements of SMCRA and 30 CFR part 702 can be approved.

2. OAC 1501:13-4-16(G)(2)(a)(i), Requirements for Exemption

Ohio is proposing to add a requirement that a legally binding agreement be submitted with the initial request for exemption from the requirements of ORC Chapter 1513. There is no Federal counterpart to the proposed rule. By letter dated August 30, 1991 (Administrative Record No. OH-1572), Ohio has clarified that subsection (2)(a)(i) applies specifically to the initial application for the incidental coal exemption and not to existing operations. The Director finds, therefore, that this proposed rule is not consistent with the reporting requirements at 30 CFR 702.18 which require the operator to file the legally binding sales agreement with his annual report.

3. OAC 1501:13-4-16(K)(5), Reporting Requirements

Ohio is proposing to require that the annual report shall include projections for each mining area of the anticipated production of coal and of other minerals in the upcoming 12-month period. There is no Federal counterpart to the proposed rule. The Federal rule at 30 CFR 702.18(b) identifies six items of information that must be included in the annual report for each mining area both on a cumulative and 12-month basis. Ohio has proposed identical counterparts to these six items required by 30 CFR 702.18(b) at OAC 1501:13-4-16(K)(4). The proposed rule at (K)(5) does not change these requirements. In the preamble to the Federal rule on incidental mining exemption, a commenter wanted OSM to require additional information in the annual report. OSM rejected this comment but stated that "[t]he regulatory authorities are, however, free to require or request any documentation necessary to establish or evaluate the status of the exemption" (54 FR 52118). The Director finds, therefore, that the proposed rule is within Ohio's discretion and is not inconsistent with the Federal regulations at 30 CFR 702.18 and can be approved.

4. OAC 1501:13-4-16(K)(6), Reporting Requirements

Ohio is proposing to include in the annual reporting requirements the annual submittal of a legally binding agreement for future sales. There is no Federal counterpart to the proposed rule. However, the Federal rule at 30 CFR 702.14(b)(1) states that a legally binding agreement for the future sale of other minerals is sufficient to demonstrate a bona fide anticipation that a market will exist within a 12-month period. OSM's intent in adding this language in the final rule on December 20, 1989, was to ensure that the claim to a future market must be demonstrated by the operator by some evidence that the market will exist in the future (54 FR 52109). Furthermore, the annual submittal of such a contract to Ohio is analogous to the information required by 30 CFR 702.18(b) to be submitted by the operator in the annual report. Submitting a contract for future sales once a year is appropriate because "OSM has concluded that an annual report is the best way of apprising the regulatory authority of the status of the exempt operation, while avoiding the burden of paperwork on the regulatory authority and the operator that would result from more frequent reporting requirements" (54 FR 52118, December 20, 1989). The rule will assist Ohio in

determining whether an existing operation is maintaining the condition required at OAC 1501:13-4-16(G)(2)(a). The Director finds, therefore, that the proposed rule is reasonable and is not inconsistent with the Federal regulations at 30 CFR 702.18 and can be approved.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the October 31, 1990, *Federal Register* (55 FR 45809) closed on November 30, 1990. No comments from the public were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period was subsequently reopened and announced in the May 22, 1991, *Federal Register* (56 FR 23531) and again in the September 25, 1991, *Federal Register* (56 FR 48470). The public comment periods closed on June 21, 1991, and October 25, 1991, respectively. Comments were received from the Ohio Historic Preservation Office (OHPO). The scheduled public hearings were not held as no one requested an opportunity to provide testimony.

The OHPO was concerned that the proposed amendment would remove a portion of mining operations from the Federally required permitting process. The Director agrees that such mining operations would not need a surface coal mining permit. However, it was Congress' intent to do so. Section 701(28) of SMCRA excludes from the definition of surface coal mining operations the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-½ percent of the tonnage of minerals removed for purposes of commercial use or sale. Operations exempt under this definition are not subject to the permitting provisions or the environmental protection performance standards of title V and abandoned mine reclamation fee provisions of title IV of SMCRA. OSM and Ohio are, however, authorized to inspect and enter sites to verify the validity of claimed exemptions.

OHPO opined that incidental coal mining operations are subject to Section 106 review process and, as such, Federal agencies are required to take into account how these undertakings could affect historic properties and to give the Advisory Council on Historic Preservation (the "AHP") an opportunity to comment. OHPO was concerned that operators could mine under an initial conditional permit or

that an operator could extract large quantities of coal without section 106 review process. OHPO also felt the need for such operations to be under some type of control to insure review by the AHP. OSM disagrees that State agencies' determinations of exemptions from SMCRA are subject to section 106 of the National Historic Preservation Act (NHPA). Although a district court has ruled in *Indiana Coal Council v. Lujan; National Trust for Historic Preservation v. Lujan*; Nos. 87-1016, 87-1020 (D.D.C. October 7, 1991), that State permits issued under SMCRA are subject to section 106 of the NHPA as Federal undertakings, that ruling was based upon the extensive and continuing OSM involvement with State-issued permits. By contrast, State agency determinations of exemption from SMCRA constitute a recognition that regulation under SMCRA will not occur.

In addition, whether or not section 106 review will occur with regard to specific operations is not a basis for approving or disapproving State program amendments not expressly related to historic preservation. Section 106 applies to Federal and Federally assisted undertakings when they occur, but is not a mandate that such undertakings exist. The standards for approval of State program amendments are set forth in 30 CFR chapter 7, subchapter C. As long as this amendment satisfies these standards, it may be approved notwithstanding the possible reduction in future Federal undertakings subject to section 106 of the NHPA.

OSM solicited comments from the AHP on this amendment. The AHP had no comments (Administrative Record Number OH-1614).

The OHPO also asserted that incidental mining operations be placed under some form of permitting and regulatory control to ensure that such projects are subjected to the full measure of the intent of the section 106 review process. OSM rejects this comment because operations which qualify as exempt are not subject to permitting and regulatory controls under SMCRA, other than to ensure that they satisfy the exemption criteria. A State, however, may implement additional State controls over operations exempt under SMCRA, but such controls would not necessarily insure that section 106 procedures would apply.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were

solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Environmental Protection Agency, the U.S. Department of Agriculture, Soil Conservation Service, and the U.S. Army Corps of Engineers responded that they had no comments on the proposed amendment.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), commented that the proposed amendment may pose some conflicts in that MSHA does not consider a mine to be a coal mine unless the production reports indicate that coal is the major product of the mine. In addition, MSHA commented that the proposed amendment would consider any mining operation a coal mine if the weight of coal extracted is one-sixth or greater of the total weight of minerals extracted. OSM believes that the rules proposed by Ohio concerning the extraction of coal incidental to the extraction of other minerals are no less effective than the Federal rules promulgated on December 20, 1989 and no less stringent than section 701(28) of SMCRA.

No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Revised Program Amendment Number 46, originally submitted by Ohio as Program Amendment Number 46 on October 12, 1990, and revised and submitted by letters dated April 15, 1991, and August 30, 1991.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio 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 conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which 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 such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

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.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, 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 will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

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

Intergovernmental relations, Surface mining, Underground mining.

January 28, 1992.

Carl C. Close,

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 935—OHIO

1. The authority citation for part 935 continues to read as follows:

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

2. In section 935.15, a new paragraph (bbb) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

(bbb) The following amendment to the Ohio regulatory program, as submitted to OSM on October 12, 1990, and revised on April 15, 1991, and August 30, 1991, is approved, effective April 13, 1992:

Revised Amendment Number 46 which consists of revisions to the Ohio Revised Code (ORC) at 1513.01 paragraph (G) (1)(a) and Ohio Administrative Code (OAC) at 1501:13-1-02(S)(1)(a) and 1501:13-14-01 and the addition of two new rules at OAC 1501:13-4-16 and 1501:13-5-03 which concern the extraction of coal incidental to the extraction of other minerals.

[FR Doc. 8453 Filed 4-10-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Wyoming Abandoned Mine Land Reclamation (AMLR) Plan (Wyoming Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.* The amendment consists of revisions to the Wyoming Plan so that the State may conduct its AMLR Program in accordance with the provisions of SMCRA, as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101-508; AMRA) and improves operational efficiency of its AMLR program (Wyoming Program).

EFFECTIVE DATE: April 13, 1992.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Plan.

II. Submission of Plan Amendment.

III. Director's Findings.

IV. Summary and Disposition of Comments.

V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Wyoming Plan

On February 14, 1983, the Secretary of the Interior approved the Wyoming Plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the February 14, 1983, *Federal Register* (48 FR 6536). OSM announced in the May 25, 1984, *Federal Register* (49 FR 22139), the Director's decision accepting certification by Wyoming that it had addressed all known coal-related impacts in the State that were eligible for funding under the Wyoming Program and therefore could proceed in reclamation of low priority non-coal reclamation projects. The Director accepted Wyoming's proposal that it would seek immediate funding for reclamation of any additional coal-related problems that occur during the life of the Wyoming Program.

II. Submission of Plan Amendment

By letter dated December 16, 1991 (Administrative Record Nos. WY 17-5 and 17-6), Wyoming, at its own initiative, submitted to OSM a proposed amendment to its approved plan pursuant to SMCRA. In order to implement and accomplish the objectives of AMRA, Wyoming proposed revisions to Wyoming Statutes (W.S.) 35-11-1201 through 1308 and chapters I through VIII of the rules of the Wyoming Program.

The proposed amendment consists of revised narratives that replace or modify several sections of the Wyoming Plan. Specifically, Wyoming proposed to amend parts of the approved plan by:

(1) Adding definitions for the terms "adversely affected," "enhancement," and "mineral" to provide interpretation of several terms and phrases in the revised rules;

(2) Reorganizing the Wyoming Program within the Department of Environmental Quality (DEQ) and changing the "Administrator" to the "Director" of DEQ;

(3) Revising the Wyoming Plan to allow reliance on existing appraisal information for small sites located in rural areas where liens will not apply or may be waived;

(4) Adding a Wyoming Program section setting forth the procedures for ranking eligible coal, non-coal, and facility projects for funding;

(5) Creating an AMLR Advisory Board appointed by the Governor to assist DEQ with decisions related to project ranking;

(6) Adding a Wyoming Program section setting forth the conditions for a project to be eligible for AMLR funding, the priority scheme for funding eligible projects, and the authority for the Governor to elevate the priority of a project based upon the Governor's determination of need and urgency; and

(7) Adding a Wyoming Program section setting forth minimum application requirements for proposals for funding under the public facilities provisions and clarifying AMLR funding procedures.

OSM announced receipt of the proposed amendment in the December 31, 1991, *Federal Register* (56 FR 67580) (Administrative Record No. WY 17-7) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on January 30, 1992. The public hearing, scheduled for January 27, 1992, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with section 405 of SMCRA, that the proposed amendment to the Wyoming Program submitted on December 16, 1991, is not inconsistent with SMCRA and the Wyoming Plan. Further, the Director has determined, pursuant to 30 CFR 884.14, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. View of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the Plan Amendment.

4. The Plan Amendment meets all requirements of OSM's AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The Plan Amendment is in compliance with all applicable State and Federal laws and regulations.

IV. Summary and Disposition of Comments

1. Public Comments

In accordance with 30 CFR 884.15(a), the Director solicited public comments and provided an opportunity for a public hearing of the Plan Amendment in the December 31, 1991, *Federal Register* (56 FR 67580). No public comments were received as of January 30, 1992, the close of the public comment period. Because no one requested an opportunity to

testify at the public hearing scheduled for January 27, 1992, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal agencies with an actual or potential interest in the Wyoming Plan.

By letter dated January 2, 1992, the U.S. Geological Survey, stated that the Plan Amendment to the Wyoming Program in response to the AMRA of 1990 has no geologic aspects requiring comment (Administrative Record No. WY 17-9).

By letter dated January 4, 1992, the U.S. Department of Agriculture, Agriculture Research Service, Northern Plains Area, expressed concerns with the Plan Amendment (Administrative Record No. WY 17-8). Specifically, these concerns dealt with administrative issues pertaining to (1) the level of funding for research projects and (2) appointments to the AML Advisory Board as proposed in chapter VI, section 2(c) and chapter VII, sections 5 and 6 of Wyoming's Program regulations. These concerns deal with provisions that are within the discretion of the State under the Wyoming Plan and do not require OSM approval. The Agricultural Research Service also made substantive comments pertaining to (1) grandfathering prior project proposals and (2) defining the terms "need" and "urgent" as proposed in Wyoming's Program regulation at section 6 (c) and (d) of Chapter VII. Wyoming previously raised these two issues before OSM and requested OSM to provide a clear direction in relation to these issues. OSM has determined that the State is within its authority to decide to grandfather specific prior proposals and to allow the Governor discretion in applying the terms "need" and "urgent." The Plan Amendment is consistent with section 411(f) of SMCRA, and the Director is not requiring Wyoming to revise its plan in response to the comments.

By letter dated January 16, 1992, the Bureau of Reclamation stated that the Plan Amendment will not have an effect on Bureau of Reclamation projects or operations (Administrative Record No. WY 17-11).

By letter dated January 27, 1992, the U.S. Bureau of Mines, acknowledged receipt of the Plan Amendment and stated that it had no comments on it (Administrative Record No. WY 17-16).

By letter dated January 29, 1992, the U.S. Soil Conservation Service Acknowledged receipt of the Plan

Amendment and stated that it had no comment on it (Administrative Record No. 17-13).

By letters dated January 30 and 31, 1992, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA), Arlington, Virginia and Denver, Colorado offices, commented that the Plan Amendment does not appear to conflict with any current MSHA regulations (Administrative Record Nos. WY 17-18 and 17-15, respectively).

By letter dated February 5, 1992, the Department of the Army, U.S. Army Corps of Engineers, acknowledged receipt of the Plan Amendment and stated that it had no comment on it (Administrative Record No. WY 17-17).

By letter dated January 8, 1992, the State Historical Preservation Office (SHPO) acknowledged receipt of the Plan Amendment and indicated it had no objection to the Plan Amendment provided OSM and the Wyoming DEQ followed the procedures established in the regulations at 30 CFR 800 (Administrative Record No. WY 17-10).

By letter dated January 15, 1992, the Advisory Council on Historic Preservation (AHP) expressed concern that the Wyoming Plan does not adequately address the provisions of section 106 of the National Historic Preservation Act of 1990 (NHPA) (Administrative Record No. WY 17-12). The Council understood that the Plan Amendment would supersede the Wyoming Plan. After clarification by OSM that there is no change in the requirements of section 106 of the NHPA with the Plan Amendment, the AHP indicated it has no comments on the Plan Amendment (Administrative Record No. WY 17-14).

By memorandum dated February 13, 1992, the Bureau of Indian Affairs stated it had no objections to the Plan Amendment because it does not affect Indian lands (Administrative Record No. WY 17-19).

V. Director's Decision

The Director finds that Wyoming's December 16, 1991, proposed amendment to the Wyoming Plan is in accordance with section 405 of SMCRA and the Secretary's regulations at 30 CFR 884.15, and approves it.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming Program, are being amended to implement this decision. In addition, the Director is taking this opportunity to codify at 30 CFR 950.35 his decision on Wyoming's certification of completion of all coal-related reclamation that was

included in the Federal Register on May 25, 1984.

VI. Procedural Determinations

1. National Environmental Policy Act

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual (516 DM 6, appendix 8, paragraph 8.4B(29)).

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM exemptions from sections 3, 4, 7, and 8 of Executive Order 12291 for decisions directly related to State/Tribe AMLR plans and amendments. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require 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 will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 11, 1992.

Raymond L. Lowrie,

Assistant Director, Western 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 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

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

2. Section 950.30 is revised to read as follows:

§ 950.30 Approval of Wyoming abandoned mine land reclamation plan.

The Wyoming Abandoned Mine Land Reclamation Plan, as submitted on August 16, 1982, and as subsequently revised, is approved effective February 14, 1983. Copies of the approved program are available at:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918.

State of Wyoming, Department of Environmental Quality, Abandoned Mine Lands Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, WY 82002.

3. Section 950.35 is added to read as follows:

§ 950.35 Approval of abandoned mine land reclamation plan amendments.

(a) Certification by Wyoming of completion of all known coal-related impacts is accepted effective May 25, 1984.

(b) The revisions to the Wyoming plan as submitted to OSM on December 16, 1991, are approved effective April 13, 1992.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-603; RM-7076, RM-7319]

Radio Broadcasting Services; Celina, Watertown, and Baxter, TN

AGENCY: Federal Communications Commission.