

promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 20, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating 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 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

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

2. Section 920.15 is amended by adding paragraph (bb) to read as follows:

§ 920.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment, as submitted to OSM on June 16, 1995, is approved effective November 9, 1995.

The amendment consists of revisions to the following statutes in the Annotated Code of Maryland (Code) and regulations in the Code of Maryland Regulations (COMAR):

- Code 7-505 Small Operators Assistance Program.
- Code 7-515 Small Operators Assistance Program (cross-reference to 7-505(c)(7) which pertains to reclamation plans, is approved only to the extent that it authorizes use of SOAP funding for the preparation of cross-sections, maps, and plans authorized by section 507(b)(14) of SMCRA and 30 CFR 795.9(b)).
- COMAR Program Services.
- 08.20.16.02A
- COMAR Eligibility for Assistance.
- 08.20.16.03A, B
- COMAR Applicant Liability.
- 08.20.16.08A, B

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30 CFR Part 935

[OH-234; Amendment Number 63R]

Ohio Regulatory and Abandoned Mined Land Reclamation Program Amendment

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 Ohio permanent regulatory and Abandoned Mined Land reclamation programs (hereinafter referred to as the Ohio programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to reduce and reorganize the engineering staff of the Ohio programs in response to recent drops in Ohio coal production. The amendment would abolish 3.6 Ohio engineering staff positions and would reorganize the remaining engineering staff positions to assume the existing job duties. This program amendment does not propose any revisions to Ohio's coal mining law or rules.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel L. Schrum, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program.
- II. Discussion of the Proposed 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, 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, 935.15, 935.16.

II. Discussion of the Proposed Amendment

By letter dated March 15, 1993 (Administrative Record No. OH-1845),

the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 63 (PA 63). In that submission, Ohio proposed to reduce the staff of the Ohio programs by abolishing 28 existing positions. Ohio also proposed to reorganize the remaining staff positions to assume the existing job duties. PA 63 contained no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

OSM announced receipt of PA 63 in the April 8, 1993, Federal Register (58 FR 18185), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 10, 1993.

OSM and Ohio staff met on May 20, 1993, to discuss OSM's preliminary concerns and questions about PA 63. By letter dated June 16, 1993 (Administrative Record No. OH-1890), Ohio submitted additional information in response to those OSM concerns and questions. Through an oversight, OSM did not reopen the public comment period at that time.

Subsequently, by letter dated November 2, 1993 (Administrative Record No. OH-1948), OSM formally provided Ohio with its questions and comments on the March 15 and June 16, 1993, submissions of PA 63. OSM's questions and comments were listed under the following six headings: Streamlining of AML Designs; Engineering; Bond Forfeitures; Engineering; Inspection and Enforcement Issues; Position Descriptions; Bond Forfeiture Program; and SOAP Program.

By letter dated December 6, 1993 (Administrative Record No. OH-1971), Ohio provided its responses to OSM's November 2, 1993, questions and comments. In addition, Ohio included three attachments. The first attachment was a November 5, 1993, letter to OSM explaining organizational responsibilities within Ohio's engineering/geotechnical support group and AML program. The second attachment was a log of engineering inspection and enforcement activity. The third attachment was an example of the revised position description for Ohio's reclamation inspectors, dated April 5, 1993. In its December 6, 1993, Administrative Record information, Ohio noted that additional position descriptions for Ohio's engineering management staff were being revised but did not attach copies.

OSM announced receipt of Ohio's additional Administrative Record information in the January 21, 1994, Federal Register (59 FR 3325), and, in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 7, 1994.

During its review of Ohio's December 6, 1993, response and attachments, OSM identified two concerns regarding engineering practices and engineering workload which OSM staff communicated to the State during a meeting held on April 20, 1994 (Administrative Record No. OH-2012). Ohio responded in a letter dated April 21, 1994 (Administrative Record No. OH-2014) with additional information on both issues. OSM announced receipt of this additional information, along with the explanatory information submitted by Ohio on June 16, 1993, and reopened the comment period for PA 63 in the June 9, 1994, Federal Register (59 FR 29748). The public comment period closed on June 24, 1994.

OSM and Ohio staff met on July 14, 1994, to discuss Ohio's progress with the reorganization of its engineering staff and whether the proposed staffing levels could handle the anticipated engineering workload (Administrative Record No. OH-2038). As of that date, Ohio had completed its engineering reorganization but could not yet provide OSM with projected workload calculations.

In the September 1, 1994, Federal Register (59 FR 45206), the Director of OSM announced his partial approval and deferral of PA 63. The Director approved the proposed staffing changes to ten areas of Ohio's programs but deferred his decision on the proposed changes to Ohio's engineering staff. The Director deferred that portion of his decision based on Ohio's April 21, 1994, letter to OSM (Administrative Record No. OH-2014) and the July 14, 1994, meeting with Ohio (Administrative Record No. OH-2038) in which Ohio indicated that its reorganization of engineering resources was still underway. Ohio agreed to resubmit the engineering portion of the amendment, upon completion, to OSM for review.

On November 1, 1994 (Administrative Record No. OH-2068), OSM requested an update from Ohio on the State's progress in documenting the results of its engineering reorganization. OSM and Ohio staff met on November 29, 1994, to discuss that progress (Administrative Record No. OH-2071). Ohio provided

copies of four supporting documents at that time.

On November 29, 1994 (Administrative Record No. OH-2072), the Ohio Inspector General (OIG) published his report of investigation concerning the Sands Hill coal slurry impoundment. Ohio's PA 63 was mentioned specifically in the allegations discussed in the OIG report. The report stated that the OIG's investigation did not develop any information that the Chief of the Ohio Department of Natural Resources, Division of Reclamation reorganized the Division of Reclamation to benefit the coal industry.

OSM and Ohio staff met again on December 15, 1994 (Administrative Record No. OH-2074), at which time Ohio provided several additional documents describing Ohio's projection of the engineering resources needed to support its regulatory program. On December 30, 1994, Ohio provided a similar analysis of the engineering needs of its AML program (Administrative Record No. OH-2089). On January 23, 1995 (Administrative Record No. OH-2084), OSM provided comments to Ohio on these engineering work projections.

By letter dated February 2, 1995 (Administrative Record No. OH-2088), Ohio submitted its revised engineering staff configuration as Program Amendment Number 63 Revised (PA 63R). In this submission, Ohio is proposing to reduce the engineering staff of the Ohio regulatory and AML programs down to 10.4 full-time positions by abolishing 3.6 of the 14 engineering positions which supported those programs prior to PA 63. As with the previous submissions of PA 63, PA 63R contains no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

Ohio's February 2, 1995, submission of PA 63R consisted of five parts:

- (1) Description and justification of engineering staff actions;
- (2) Proposed table of organization showing the 10.4 engineering staff positions;
- (3) Proposed position description for Engineering Specialists;
- (4) Personnel table showing distribution of work percentages of its 10.4 engineering staff positions between Ohio's regulatory and AML programs; and
- (5) Eight documents included by reference: table of organization, position description, personnel table, regulatory workload assessment, regulatory workload: geographic distribution—

1993, regulatory work logs—1993,

regulatory ARP logs—1993, and AML workload analysis.

As justification for these engineering staff changes, Ohio also submitted a narrative explaining its staffing proposal and summarizing the results of an engineering workload analysis conducted by Ohio with OSM assistance. Ohio also stated its plans to conduct on-going assessment of any additional engineering support needed by its regulatory and AML programs.

OSM announced receipt of PA 63R in the February 17, 1995, Federal Register (60 FR 9317), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 20, 1995.

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 Ohio PA 63R. Section 503(a)(3) of SMCRA requires that a State regulatory authority must have sufficient administrative and technical personnel, as well as funding, to implement, administer and enforce its approved programs. The Director's findings discussed below reflect his determinations that under the proposed reduction and reorganization of Ohio's engineering staff, Ohio has sufficient engineering personnel to implement, administer and enforce its approved programs.

(1) Overall Justification for Engineering Staff Changes

Ohio's overall justification for the reduced engineering staff levels is based on the decline, between 1987 and 1992, in the issuance of new permits, the number of active permits, the number of inspections and enforcement actions, and in overall coal production. The Director concurs that this five-year decline has occurred as a result of the overall decline in Ohio coal production since 1977 (Administrative Record No. OH-2154). The Director also concurs that this present industry downturn has had direct impact on Ohio's programs and that Ohio's goals of reducing and streamlining its engineering program are therefore appropriate.

(2) Proposed Changes to Ohio Regulatory Engineering Staff

Ohio is proposing to have a total of 3.2 full-time engineering staff positions dedicated to its regulatory program. These 3.2 positions will be made up of varying percentages of the work hours of eight employees: 25 percent of one Central Office Engineer, 50 percent of

two Field Engineers, 25 percent of one Field Engineer, 20 percent of one Surveyor, and 50 percent of three Engineering Specialists. This staffing level represents a reduction of 0.8 full-time staff positions from the 4.0 regulatory engineering positions that existed prior to PA 63.

Ohio has submitted a proposed Position Description for the three Engineering Specialist positions which it plans to create to provide technical assistance to its Central Office and Field Engineers. Ohio has also provided an explanation of the need for and responsibilities of these positions in the narrative portion of PA 63R.

Ohio has documented that the decrease in the number of active mine permits between 1987 and 1992 has also meant a corresponding decrease in engineering workload in the Inspection and Enforcement section. This engineering workload includes reviews of mine plans, pond designs, and general engineering assistance to inspectors. Ohio estimates that between 1570 and 4312 engineering staff hours will be needed each year to accomplish these tasks. OSM estimates the required hours to be in the range of 2100 to 6000 hours annually.

With the proposed 0.8 reduction in regulatory engineering staff, Ohio estimates that 3758 hours of engineering staff time will be available to meet these needs. Because this figure falls within both Ohio's and OSM's projections of needed resources, the Director finds that this engineering staff reduction is commensurate with the decrease in Ohio's regulatory engineering workload and will not prevent Ohio from effectively conducting its approved program. During oversight of the Ohio program, OSM will monitor the engineering workload to assure that there will be adequate staffing levels to implement the Ohio program.

(3) Proposed Changes to Ohio AML Engineering Staff

Ohio is proposing to have a total of 7.2 full-time engineering staff positions dedicated to its AML program. These 7.2 positions will be made up of varying percentages of the work hours of eleven employees: 100, 70, and 50 percent of three Central Office Engineers, respectively; 65 percent of one Field Engineer; 45 percent of two Field Engineers; 80 percent of one Surveyor; 50 percent of three Engineering Specialists; and 100 percent of one Drafting Technician. This staffing level represents a reduction of 2.8 full-time staff positions from the 10.0 AML engineering positions that existed prior to PA 63.

Ohio's Federal AML Program is responsible for reclaiming mined lands which were abandoned prior to August 3, 1977 and which are causing danger to the public's health and safety. The program selects, designs, and constructs AML reclamation projects to abate these public hazards. Income to Ohio's Federal AML Program is based, in part, on the amount of Federal coal severance taxes paid by Ohio coal mine operators. With the overall decline in Ohio's Statewide coal production since 1977, the funding available to Ohio's Federal AML program and the number of AML reclamation projects designed and constructed have also decreased.

Ohio estimates that, at current AML project levels, between 3502 and 22364 engineering staff hours are required annually to plan, design, and monitor Federal AML and emergency reclamation projects. With the proposed 2.8 reduction in AML engineering staff, Ohio estimates that 7951 hours of engineering staff time will be available to meet these needs. Because this figure falls within Ohio's projection of needed resources, the Director finds that this engineering staff reduction is commensurate with the decrease in Ohio's AML engineering workload and will not prevent Ohio from effectively conducting its approved program. As previously stated, during oversight of the Ohio program, OSM will monitor the engineering workload to assure that there will be adequate staffing levels to implement the Ohio program.

(4) On-going Assessment of Ohio Engineering Support

Both Ohio and OSM acknowledge the approximate nature of the workload estimates contained in PA 63R. In acknowledgement of this condition, Ohio has included in PA 63R a proposal to conduct on-going assessments of the actual engineering support needed by its programs. These assessments will allow Ohio to detect and correct any shortfall in engineering resources, should any such shortfall occur.

The Director concurs with this approach and is requiring Ohio to periodically assess the effectiveness of the engineering staff changes proposed in PA 63R and to evaluate the need for additional staff or other organizational changes.

With this provision, the Director finds, in accordance with section 503(a)(3) of SM CRA and 30 CFR 732.17, that all of proposed PA 63R meets the requirements of SM CRA and the Federal regulations in that Ohio has sufficient engineering personnel to implement its approved programs.

IV. Summary and Disposition of Comments

Public Comments

On April 8, 1993, January 21, 1994, June 9, 1994, and February 17, 1995, the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One commenter requested a public hearing, but that request was later withdrawn and so no hearings were held.

By letter dated May 10, 1993 (Administrative Record No. OH-1878), the Ohio Civil Service Employees Association (OCSEA) submitted substantive comments on 13 topics concerning PA 63. The Director discussed 12 of those topic areas in the September 1, 1994, Federal Register (59 FR 45206) as part of this decision to partially approve and defer PA 63. The remaining OCSEA comments concern Ohio's proposed engineering staff changes:

(1) As a result of staff reductions, one regulatory engineer is now performing the work of five engineers. This represents approximately an 80 percent reduction in the regulatory engineering staff. This drastic reduction is not justified by the much smaller decrease in engineering services for mining operations.

The Director notes that, before the submission of PA 63, the engineering portion of Ohio's regulatory staff (also known as the Inspection and Enforcement section or "I & E section") had five regulatory engineering positions (three environmental engineers and two project engineers), but only four of the five positions were filled. The remaining environmental engineer position was vacant.

After the first submission of PA 63, OSM raised its various engineering concerns with Ohio. Pursuant to those discussions, Ohio revised its engineering section to satisfy OSM's concerns and created positions for three engineering specialists, who will work directly with an engineer. Ohio determined, and OSM agrees, that Ohio's engineers were spending a significant portion of their time reviewing work and projects which could be more efficiently conducted by engineering specialists. Ohio is also requiring a surveyor to devote 20 percent of his time to the engineering portion of the I & E section. After Ohio implements its engineering staffing plan, the engineering portion will be composed not only of four engineers (devoting up to 50 percent of their time to the I & E section), but three engineering specialists (devoting up to

50 percent of their time to the I & E section) and a surveyor to assist the engineers. The net effect will be a loss of 0.8 engineering positions devoted to regulatory tasks as compared to the staffing level which existed prior to the initial submission of PA 63. There will be more engineering positions in place; but those positions will be conducting a wider range of regulatory and non-regulatory engineering work.

The Director finds that the addition of the three engineering specialists and the surveyor to the engineering section creates a more effective distribution of the workload of the engineering portion of the I & E section because it will free up more time for the engineers to perform those tasks which are best suited for the engineers and their areas of expertise. The Director also finds that the reduction of full-time positions by 0.8 is nominal in light of the reduced workload. Lastly, the Director finds that the existing staff is capable of effectively performing all the functions required by Ohio's regulatory program. For further discussion, see Comment 2 below.

(2) *Ohio is assigning engineer job duties to personnel not necessarily qualified to perform those duties and with job descriptions which only include assisting an engineer and which do not require performing the actual duties.*

The Director disagrees with the commentor. As discussed in the previous comment, Ohio found that the engineers were performing tasks that could have been done by other trained personnel. Ohio is free to delegate to non-engineers those engineering support activities so long as those personnel are capable of performing those duties.

As part of PA 63R, Ohio is transferring selected responsibilities from its engineers to engineering specialists and mine inspectors. OSM has reviewed the position descriptions provided by Ohio for the proposed new engineering specialist positions and existing inspector positions affected by the engineering staff changes. OSM has concluded that the proposed responsibilities for reviewing mining plans and pond designs, collecting field data, and operating computer applications are within the scope and capability of these positions.

This determination is based on the fact the Ohio's coal mining law and rules do not specifically require review of any part of mining permits by an engineer employed by Ohio. Rather, the permittee cannot conduct specific activities such as build a pond, construct a road, or develop an excess spoil site until that activity is approved by the Chief. The rules are not specific

about how the Chief will develop or document decisions concerning engineering-type activities. Historically, Ohio field inspectors and permit reviewers have requested engineering review of typical engineering-type activities as part of the permit-approval process; but that review need not be done by a registered engineer.

The use of non-engineer design specialists is addressed in Ohio Revised Code (ORC) Chapter 4733. Non-engineers can perform all duties provided that those duties "do not include responsible charge of engineering or survey work" (ORC 4733.18(B)(1)) and the design specialist is "an employee or subordinate of a person holding a certificate of registration" (ORC 4733.18(B)(1)). Ohio has stated that the three engineering specialists will work directly with an engineer and under the supervision of a professional engineer (Administrative Record No. OH-2155).

(3) *Ohio did not consider recommendations from its engineering staff in purchasing a UNIX computer system and that system has a high learning curve and does not meet the needs of the engineering staff.*

This comment is beyond the scope of this amendment because it concerns an internal resource management issue which is not directly related to Ohio's proposed staffing changes. Therefore, the Director is acknowledging but making no response to this comment.

The Director notes that one of the engineering specialists will be assigned to the TIPS workstation. TIPS is an advanced workstation that utilizes sophisticated computer software which is capable of substantially reducing the amount of time needed to evaluate certain type of projects in both the AML and regulatory programs. Ohio will assess the continued needs of its engineering program with regard to the use of SEDCAD, another engineering software program capable of predicting concentration of settleable and suspended solids in the effluent from sedimentation ponds and otherwise analyzing drainage control systems on surface mines.

(4) *Ohio has taken a systematic and planned approach to decimate the effectiveness and productivity of the engineering and design section. What was once a highly effective section has been dismantled without any survey work, designers, drafters, and less engineers to be replaced with machines with no personnel to operate them.*

The Director disagrees that Ohio has decimated the effectiveness and productivity of the engineering and design section. The reduced and

reorganized engineering staff now proposed in PA 63R is capable of performing all functions required by Ohio's programs.

OSM also received comments on PA 63 and PA 63R dated June 22, 1994 (Administrative Record No. OH-2026), and July 13, 1995 (Administrative Record No. OH-2145), from Howard R. Fauss, P.E. In his June 22, 1994, letter, Mr. Fauss commented that the former Chief of the Division of Reclamation, Ohio Department of Natural Resources, restructured the Division of Reclamation to reduce or eliminate engineer's input into the review of mining and operations plans. According to Mr. Fauss, the Chief drastically reduced engineering hours available for regulatory purposes and eliminated engineers dedicated to those tasks. The Chief's plan was to create an engineering organizational structure with limited accountability, no individual responsibility for assisting the reclamation inspector, and no qualified engineers available to do such work. Engineers were pressed to do AML rather than regulatory work, with 44 persons on Ohio's AML staff and only three regulatory engineers.

In his July 13, 1995 letter, Mr. Fauss commented that Ohio's proposed fragmentation of individual engineer's duties between different programs is a clear recipe for a way not to get the regulatory duties accomplished. According to Mr. Fauss, the former Chief was always attempting to direct the engineer's attentions to anything other than regulatory duties. Even though Ohio's revised engineering staff plan looks better on paper, it will not accomplish the intended goals. Ponds will still not receive a realistic review using SCS-recommended parameters.

The Director notes these comments and reiterates that OSM's purpose in reviewing PA 63R is to determine if the reduced and reorganized engineering staff proposed in PA 63R will be capable of performing all engineering functions required by Ohio's programs. As discussed above, OSM has reviewed Ohio's workload analyses and concluded that the proposed staffing should be adequate. Ohio and OSM will continue to monitor the engineering workload of Ohio's programs. If those analyses indicate that the revised staffing is insufficient, OSM will require Ohio to further amend its program.

It is not appropriate for OSM to attempt to respond to Mr. Fauss' comments concerning the intent behind Ohio's engineering staff changes. OSM may only decide if those changes are likely to prevent or negatively impact Ohio's ability to perform its

responsibilities under its approved programs. OSM does note, however, that the OIG's report (Administrative Record No. OH-2072) did not agree with Mr. Fauss' claims concerning the purpose of the engineering reductions.

OSM received no other public comments on PA 63R.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on PA 63 and PA 63R from the Regional Director of the U.S. Environmental Protection Agency (EPA) and from the heads of four other Federal agencies and one State agency with an actual or potential interest in the Ohio program. Comments received concerning PA 63 were discussed in the September 1, 1994 Federal Register (59 FR 45211).

Concerning PA 63R, the U.S. Department of Labor, Mine Safety and Health Administration, responded without comment. Comments on PA 63R were also received from the Ohio Historic Preservation Office (OHPO). The OHPO did not object to the proposed amendment. However, the OHPO noted that historic preservation matters must be fully integrated into the planning and engineering process and should be reflected in all job descriptions and factored into any evaluations of staffing needs. The Director acknowledges the importance of historic preservation planning and, through normal oversight of the Ohio program, will ensure that these matters are not adversely impacted by the proposed engineering staff changes.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on PA 63R from EPA. By letter dated February 28, 1995 (Administrative Record No. OH-2096), EPA stated that it had no comments on the amendment.

No other agency comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed

amendment as submitted by Ohio on February 2, 1995.

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.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating 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. Section 935.15 is amended by adding new paragraph (zzz) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * *

(zzz) The following amendment (Program Amendment 63R) pertaining to the Ohio regulatory and Abandoned Mined Land reclamation programs, as submitted to OSM on February 2, 1995, is approved, effective November 9, 1995: Reduction and reorganization of engineering staff.

[FR Doc. 95-27807 Filed 11-8-95; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 936**[SPATS No. OK-016-FOR]****Oklahoma Regulatory Program**

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed a revision to its rules pertaining to procedures for assessment conference. The amendment is intended to revise the Oklahoma program to improve operational efficiency.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated July 5, 1995 (Administrative Record No. OK-972), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. Oklahoma proposed to revise its rules at Oklahoma Administrative Code (OAC) 460:20-61-10 concerning procedures for assessment conference.

OSM announced receipt of the proposed amendment in the July 27, 1997, Federal Register (60 FR 38533), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 28, 1995.

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.

The proposed amendment submitted by Oklahoma adds the word "original" before the word "abatement" in the second sentence of OAC 460:20-61-10(b)(1). The effect of this proposed revision is that civil penalty assessment conferences will be held within 60 days from the date of issuance of the proposed assessment or the end of the *original* abatement period, whichever is later. The Federal counterpart regulation at 30 CFR 845.18(b)(1) provides that the assessment conference be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.

The current time frame for holding Federal civil penalty assessment conferences resulted from a revision to 30 CFR 845.18(b)(1) which was effective April 8, 1991 (56 FR 10060, March 8, 1991). In the Federal Register document announcing the regulation revision, the preamble addressed the effect of the revision in States with primacy:

Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain civil penalty assessment procedures which are the same as or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR part 845. The time allowed for holding an assessment conference is not prescribed in the Act; thus, the applicable standard governing the adequacy of State program provisions under 30 CFR 840.13(c) is whether the approved State programs contain procedural requirements relating to civil penalties which are consistent with (i.e., no less effective than) 30 CFR 845.18, as amended. Because OSM allows the States reasonable latitude in establishing certain

procedural time frames, and because this rule merely extends one of such time frames, States do not have to adopt this change.

As indicated in the preamble provision quoted above, OSM allows the States reasonable latitude in establishing certain procedural time frames, and Oklahoma's proposed rule still provides for a minimum 60-day time frame for holding civil penalty assessment conferences. Therefore, the Director finds that Oklahoma's proposed revision does not render its rule at OAC 460:20-61-10(b)(1) less effective than the Federal regulation at 30 CFR 845.18(b)(1), and he is approving the proposal.

IV. Summary and Disposition of Comments*Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program. The Department of the Army, U.S. Army Corps of Engineers, responded that its review of the amendment found the changes to be satisfactory (Administrative Record No. OK-972.02). The United States Department of the Interior, Bureau of Land Management, responded that the amendment appears to be an improvement because it promotes timely procedures (Administrative Record No. OK-972.03).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The revision that Oklahoma proposed to make in this amendment did not pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. OK-972.01). EPA did not respond to OSM's request.