section 3 of Executive Order 12988 (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.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 et seq.) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.


Brent Wahlquist,
Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

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

2. Section 914.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

<table>
<thead>
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<th>Original amendment submission date</th>
<th>Date of final publication</th>
<th>Citation/description</th>
</tr>
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<td>March 6, 1998</td>
<td>September 29, 1998</td>
<td>310 IAC 12-0.5-6(a) through (c); 12-3-78(a) and (b); 12-5-98(a), (c) and (d); and 12-5-145.5</td>
</tr>
</tbody>
</table>

3. Section 914.16 is amended by removing and reserving paragraphs (n), (p), and (gg).
amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated February 11, 1993 (Administrative Record No. OH-1831), Ohio submitted proposed Program Amendment Number 61 concerning augmentative practices. OSM announced receipt of this amendment in the April 1, 1993, Federal Register (58 FR 17172). On the same notice, OSM reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993. Since no one requested an opportunity to provide testimony at a public hearing, no hearing was held.

By letter dated June 11, 1993 (Administrative Record No. OH-1888), Ohio submitted additional revisions to this proposed amendment (Program Amendment Number 61R). OSM announced receipt of the revised amendment in the July 6, 1993, Federal Register (58 FR 36177), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on July 21, 1993. On August 16, 1993 (58 FR 43261), OSM approved most of the proposed amendment, but deferred decision on Ohio Administrative Code (OAC) 1501:13—9—15(F)(5), (6), and (7) concerning nonaugmentative practices.

OSM reopened a public comment period on September 15, 1993 (58 FR 48333) for the provisions OAC 1501:13—9—15(F)(6) and (7) as originally submitted on February 11, 1993, and revised on June 11, 1993, with regard to removal of sedimentation ponds and associated areas. The comment period closed on October 15, 1993. This notice also included similar proposed revisions to the Kentucky and Illinois regulations as well as a discussion of OSM's proposed policy concerning restart of the revegetation responsibility period upon removal of required sedimentary control structures. Subsequently, in the May 29, 1996, Federal Register (61 FR 26792), and in the October 22, 1997 Federal Register (62 FR 54765) OSM approved similar proposed revisions to the Colorado and Illinois regulations (respectively), based on the adoption of the proposed OSM policy published on September 15, 1993 (58 FR 48333).

By letter dated April 14, 1998 (Administrative Record Number OH-2175-01), Ohio submitted revised language of the Program Amendment #61R. Subsection OAC 1501:13—9—15(F)(4)(c) provides for practices that will not be considered augmentative when the practice and the rate of application is an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice. Subsection (F)(5) provides for the nonaugmentative repair of areas that held required sediment control structures. Subsection (F)(6) provides the minimum time that vegetation established or reestablished under subsections (F)(4)(c) and (F)(5) must have been seeded prior to a request for Phase III bond release.

On April 29, 1998 (63 FR 23405), OSM reopened the public comment period and solicited comments on the proposed provisions submitted on April 14, 1998. The comment period closed on May 29, 1998. No one requested an opportunity to testify at a public hearing, so none was held.

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 amendments.

OAC 1501:13—9—15(F)(4)

Existing subsections OAC 1501:13—9—15(F)(4)(c) and (d) have been redesignated subsections (d) and (e), respectively, and new subsection (c) has been added to read as follows:

(c) Reseeding and adding soil amendments when necessary to repair damage to land and/or established permanent vegetation, that is unavoidably disturbed in order to meet the reclamation standards of this chapter, provided that:

(I) The damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan, inappropriate vegetation practices, and/or inadequate vegetation practices, and the degree of damage varies from site to site. Further, Ohio stated that it has been its normal husbandry practice in Ohio. The damage would be expected to continue as a postmining practice.

(II) The total acreage of repaired areas under paragraphs (F)(4)(b) & (c) of this rule does not exceed ten percent of the total land affected, with no individual area exceeding three acres.

As amended, subsection 1501:13—9—15(F)(4)(c) authorizes as a husbandry practice that does not restart the revegetation responsibility period, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed. The Federal regulations at 30 CFR 816.116(c)(4) provide for the approval of such husbandry practices provided that such practices can be expected to continue as part of the postmining land use, or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.
The mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA since (1) the lands involved are small in size and widely dispersed and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and explained in the preamble to that rule (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, this interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

The above discussion of the rules in 30 CFR Part 816, which applies to surface mining activities, also pertains to similarly or identically constructed section in 30 CFR Part 817, which applies to underground mining activities.


Ohio proposes to allow, as a nonaugmentative practice, the reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or for initial seeding of areas upon which the sediment control system was located and subsequently removed. Ohio's reference to areas that have been unavoidably disturbed in the course of gaining access for removal of sediment control structures is interpreted by OSM to include those roads necessary for maintenance of sediment ponds, diversions, and reclamation areas. However, such roads would not include haul roads or other primary roads which should either have been removed upon completion of mining or approved to be retained for an approved postmining land use.

Since the Ohio provision is limited to sediment control structures and to areas unavoidably disturbed to gain access to those sediment control structures, this provision is consistent with the OSM policy stated above. As interpreted in the policy statement above, the removal of sediment ponds and related structures is a nonaugmentative practice that does not restart the five-year responsibility period. Therefore, the Director finds that proposed OAC 1501:13-9-15(F)(5) is not inconsistent with SMCRA section 515(b)(20)(A) and no less effective than the Federal regulations at 30 CFR 816.116(c).

OAC 1501:13-9-15(F)(6)

Subsection OAC 1501:13-9-15(F)(6) has been amended to provide that the purposes of paragraphs (F)(4)(c) and (F)(5) of this rule, permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for Phase III bond release.

As discussed above, the Federal regulations provide that sediment ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality. Therefore, when the sediment control structures are removed, the surrounding drainage area has already been effectively revegetated. Following this, the entire revegetated area (or increment thereof), including the reclaimed area where the sediment control structure was located, is subject to the full Ohio program requirements concerning final inspection for bond release. The same is true for areas that have been repaired under approved husbandry practices.

That is, the proposed 12-month criterion in no way reduces or eliminates any of Ohio's standards for reclamation success for bond release. The Director believes that the 12-month criterion should be sufficient to establish a permanent and diverse vegetative cover as is required by SMCRA section 515(b)(19), especially since the lands typically involved will be small in size, widely dispersed, and surrounded by revegetated lands.

Therefore, the Director finds that the proposed provision at OAC 1501:13-9-15(F)(6), as it pertains to OAC 1501:13-
IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment and OSM's proposed policy.

Comments were received from the Kentucky Coal Association, the North Dakota Public Service Commission, the Ohio Mining and Reclamation Association, the Buckeye Industrial Mining Co., the R&F Coal Company, the Lignite Energy Council, the National Coal Association, the Kentucky Resources Council, and the Ohio Department of Natural Resources. Except for the Kentucky Resources Council, all of the commenters were in favor of the policy.

In response to the Director's proposed clarification of OSM policy, the Kentucky Resources Council initiates its comments with the premise that OSM has proposed to treat the initial seeding and restoration of areas disturbed by diversions, roads and sedimentation ponds as "normal husbandry practices." It then argues that the initial seeding of such areas is not normal husbandry practice, and any revegetation other than "husbandry practices" as defined by 30 CFR 816.116(c)(4) constitutes "augmented seeding" and would therefore require extension of the full liability period for the establishment of permanent vegetation. First, the Director did not base not restarting the liability period on the contention that revegetation of such areas is a normal husbandry practice. Second, the Director does not agree that any revegetation other than "normal husbandry practices" constitutes "augmented seeding." The legislative history of the Act reveals no specific Congressional intent in the use of the term "augmented seeding." Accordingly, OSM's interpretation of augmented seeding is given deference so long as it has a rational basis. OSM would not consider the seeding of small areas, such as ponds and their associated diversions and roads, as augmented seeding. However, the reclamation and reseeding of ancillary roads and not haul roads would be considered nonaugmentative. For further discussion of such rationale, see the Director's Finding above. Areas reclamed following removal of temporary sediment control, and associated structures such as diversions, disposal and storage areas for accumulated sediments and sediment pond embankment material, and ancillary roads used to access such areas would not be subject to a separate or extended bond liability period apart from the applicable permit area served by such structures. The seeding of sedimentation ponds and their associated diversions and roads is not the result of reclamation failure, but because 30 CFR 816.46(b)(5) prohibits the removal of temporary sedimentation ponds until two years after the last augmented seeding.

The Kentucky Resources Council overlooks the fact that for the vast majority of the reclaimed area the revegetation responsibility period will be at least five years. Neither Congressional history nor the language of the statute distinguishes between initial overall reclamation of a mined area and the subsequent restoration of temporary structures like sedimentation ponds and their associated areas. In the absence of such distinction, the Secretary is delegated discretion to determine whether a proposed state program amendment is no less effective than the Act and consistent with the counterpart Federal regulation. The Director's stated interpretation of Section 515(b)(20) is that the period of revegetation responsibility applies "to the increment or permit area as a whole, not individually to those lands within that area upon which revegetation is delayed solely because of their use in support of the reclamation effort of the planted area." See 58 FR 48333-48335, September 15, 1993.

OSM has taken consistent position in approving an amendment to the Colorado (61 FR 26792, May 29, 1996) and Illinois (62 FR 54765, October 22, 1997) surface mining programs which provided that reclamed temporary drainage control facilities shall not be subject to the extended liability period for revegetative success or the related bond release criteria. The Director, therefore, does not agree with the commenter's interpretation of Section 515(b)(20) of SMCRA.

The Kentucky Resources Council also asserts that OSM's position violates 30 CFR 816.133. Section 816.133 requires that disturbed areas be restored in a timely manner to the premining uses of land or higher or better uses. In response, the Director notes that the Ohio amendment does not eliminate this requirement.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA. The EPA responded and concurred without comment on October 18, 1993 (Administrative Record No. KY-1246).

V. Director's Decision

Based on the above findings, the Director approves Ohio's regulations at OAC 1501:13-9-15(F)(4)(c), (F)(5), and (F)(6).

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 bring their programs into conformity with the Federal standards without undue delay.
Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.


Ronald C. Recker,
Acting 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 in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *