

which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

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 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1999.

Tim L. Dieringer,

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 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 in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|---|
| * | * | * |
| May 27, 1999 | November 22, 1999. | COMAR 26.20.01.02B(82), 26.20.02.13 BB(1) through BB(8)&CC, 26.20.19.01A through G, 26.20.19.02 A, B&C, 26.20.19.03 A&D, 26.20.19.04 A(1) through (4)&C, 26.20.19.06D, 26.20.19.07(1) through (6). |

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-246-FOR]

Ohio 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 Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1501:13-1-04 of the Ohio Administrative Code (OAC) as it relates to exemptions for coal extraction incidental to government-financed highway or other construction. The amendment is intended to revise the Ohio program to include counterparts to the recently promulgated "AML Enhancement Rule," which revised the Federal regulations at 30 CFR 707.5 and added a new provision, at 30 CFR 874.17.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating

Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220. Telephone: (412) 937-2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio 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 Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated March 16, 1999 (Administrative Record No. OH-2178-00) Ohio submitted a proposed amendment to its program concerning exemptions for coal extraction incidental to government-financed highway or other construction. Ohio submitted the proposed amendment at its own initiative, in order to incorporate into its program the expanded exemption recently promulgated in the Federal regulations at 30 CFR 707.5, as part of the "AML Enhancement Rule." Under this rule,

approved Title IV abandoned mine land (AML) projects under SMCRA which involve incidental coal extraction and are less than 50 percent government financed may qualify for exemption. Projects which qualify for this expanded exemption must also meet the newly promulgated requirements contained in 30 CFR 874.17. (64 FR 7470, February 12, 1999). The proposed amendment was announced in the April 16, 1999, **Federal Register** (64 FR 18857). The initial comment period closed on May 17, 1999.

By letter dated July 9, 1999 (Administrative Record No. OH-2178-06), Ohio submitted a revised and final version of the proposed amendment. Ohio made this more recent submittal in response to an OSM, July 1, 1999, issue letter (Administrative Record No. OH-2178-05). In the letter, OSM had requested that the amendment clearly restrict exemptions to projects that are AML eligible, and clearly require that the exempted reclamation project be conducted in accordance with the provisions of 30 CFR Subchapter R.

III. Director's Findings

The following are changes to OAC Section 1501:13-1-04 made in the final submission of the proposed amendment. Revisions concerning nonsubstantive wording, format, or organizational changes will not be described in this notice.

OAC 1501:13-1-04 Exemption for coal extraction incidental to government financed highway or other construction.

(a) The following sentence has been added to Subsection (A) (3): "Funding at less than 50 percent may qualify if the project is eligible under 1513:37 of the revised code and the construction is undertaken as an approved reclamation project under Section 1513.30 or 1513.37 of the Revised Code."

(b) New Subsection (C) is added and reads as follows:

(C) Requirements for approved reclamation projects under section 1513.30 and 1513.37 of the Revised Code with less than 50 percent government financing.

(1) Determinations. The Division of Mines and Reclamation shall determine:

- (i) The likelihood of the coal being mined under a permit issued under Section 1513.07 of the Revised Code considering the coal reserves from existing mine maps or other sources, the existing environmental conditions, all prior mining activity on or adjacent to the site, current and historic coal production in the area, and any known or anticipated interest in mining the site;
- (ii) The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site; and
- (iii) The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(2) Concurrence. The regulatory program coordinator and the abandoned mine lands program coordinator must concur on determinations of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under this exemption and in the delineation of the boundaries of the AML project.

(3) Documentation. The AML case file must include the determinations made under paragraph (1) and (2) of this rule, the information taken into account in making these determinations, and the names of the parties making the determinations.

(4) Special Requirements. For each exempt project the division must:

- (i) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;
- (ii) Ensure that the reclamation project is conducted in accordance with the provisions of the AML program and procedures as

approved by the U.S. Secretary of Interior under 30 CFR Subchapter R;

- (iii) Develop site-specific reclamation requirements, including performance bonds when appropriate in accordance with approved AML procedures; and
 - (iv) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.
- (5) Limitations. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (C)(2) of this rule, the contractor must obtain a permit under section 1513.07 of the Revised Code for such coal.

The changes described above revise the OAC to correspond with revisions to the Code of Federal Regulations at 30 CFR 707 and 874 as published in the February 12, 1999, **Federal Register**, 64 FR 7470. The Director finds that the revisions do not render OAC section 1501:13-1-04 inconsistent with section 528 (2) of SMCRA (30 U.S.C. 1278), and that they are substantively identical to the changes to the Federal regulatory definition of "government-financed construction" at 30 CFR 707.5 and to the Federal provision at 30 CFR 874.17, both of which were promulgated on February 12, 1999. 64 FR 6470.

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. Because no one requested an opportunity to speak at a public hearing, no hearing was held. No comments were received.

Ohio Historical Preservation Office (OHPO)

Pursuant to 30 CFR 732.17(h)(4), the Director solicited comments on the proposed amendment from the OHPO with respect to actual or potential effects of the amendment on historic and cultural properties in the state. In accordance with the National Historic Preservation Act (NHPA), as amended (16 U.S.C. 470), the OHPO recommended the addition of language to the amendment to ensure the review determinations include the completion of coordination with the OHPO prior to initiation of the excavation and/or reclamation activities (Administrative Record No. OH-2178-04).

In response, we note that the consultation requirements of the NHPA will apply if the approval of a reclamation project involving incidental coal extraction constitutes a "Federal undertaking," as that term is defined at 36 CFR 800.2(o). Therefore, we do not believe the additional language recommended by the OHPA is necessary. Moreover, as discussed in the Finding above, the proposed amendment is substantively identical to its Federal counterparts at 30 CFR 707.5 and 874.17.

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 Ohio program. The Department of the Army, Army Corps of Engineers, concurred without comment (Administrative Record No. OH-2178-02). No other comments were received.

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 Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's comments on the proposed amendment. EPA had no comments to offer (Administrative Record OH-2178-03).

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as revised on July 9, 1999.

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 counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 1999.

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 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.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|----------------------|
| * * * * * | * * * * * | * * * * * |
| March 16, 1999 | November 22, 1999 | OAC 1501:13-1-04 |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ37-2-203; FRL-6477-3]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of Carbon Monoxide State Implementation Plan Revision; Determination of Carbon Monoxide Attainment; Removal of Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, the EPA is finalizing its determination that the

New York—Northern New Jersey—Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, EPA is approving a State Implementation Plan revision submitted by the State of New Jersey on August 7, 1998. The intended effect of the revision is to remove New Jersey's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP.

EFFECTIVE DATE: This rule will be effective November 22, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region 2 Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866.
New Jersey Department of
Environmental Protection, Bureau of

Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-3710.

SUPPLEMENTARY INFORMATION: EPA is determining that the New York—Northern New Jersey—Long Island carbon monoxide (CO) nonattainment area¹ has attained the health-related CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New Jersey's winter-time oxygenated gasoline (oxyfuel) program is no longer needed to ensure that air quality levels remain healthful. As a consequence of

¹ This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.