

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 2005.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. E6-1976 Filed 2-10-06; 8:45 am]

BILLING CODE 4310-05-P

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-250-FOR]

#### Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes

to the State's alternate bonding system (bond pool). The amendment is intended to satisfy a program condition codified in the Federal regulations.

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** Written comments must be received on this amendment on or before 4 p.m. (local time), March 15, 2006 to ensure our consideration. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., local time, on February 28, 2006.

**ADDRESSES:** You may submit comments, identified by "OH-250-FOR", by any of the following methods:

- E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov). Include "OH-250-FOR" in the subject line of the message;
- Mail/Hand Delivery: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220; or
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Docket:** You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Pittsburgh Field Division listed below.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220. Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Mr. Michael Sponsler, Chief, Division of Mineral Resources Management, Ohio

Department of Natural Resources, 1855 Fountain Square Court-Bldg. H-2, Columbus, Ohio 43224. Telephone: (614) 265-6633.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Rieger, Chief, Pittsburgh Field Division, Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

#### II. Description of the Proposed Amendment

By letter dated December 19, 2005, Ohio sent us a proposed amendment to its program (Administrative Record Number OH-2185-07) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio has submitted a draft bill for the Ohio legislature to consider that revises the ORC regarding changes to the State's alternate bonding system (bond pool). The amendment is intended to satisfy a program condition codified in the Federal regulations at 30 CFR 935.11(h). The program condition provides that Ohio must submit a program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

In addition to the revisions described in detail below, the amendment submitted by Ohio contains numerous changes to existing citations to reflect

changes in renumbering due to the proposed amendments. Also, numerous minor formatting changes have also been proposed to be made throughout the provisions. Section 1 of the amendment submittal provides the following specific revisions:

Section 1513.01(W) Definition of "Performance Security." This definition is new, and provides as follows:

Performance Security means a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the chief.

Section 1513.02(A)(5) is amended by deleting the word "bond" and adding in its place the word "security."

Section 1513.07(A)(2) is amended in the last sentence by deleting the words "bond coverage" and adding in their place the words "performance security."

Section 1513.07(B)(1) is amended by deleting the existing language and renumbering the subdivisions.

Section 1513.07(B)(2)(e)(i) is amended by adding the words "performance security" between the words "mining bond" and the words "or similar security."

Section 1513.07(B)(2)(e)(ii) is amended by adding the words "performance security" between the words "coal mining surface bond" and the words "or similar security."

Section 1513.07(E)(6) is amended by revising the phrase "surface mining bond, or security deposited" by adding the words "performance security" and "similar." As amended the phrase is as follows: "surface mining bond performance security or similar security deposited."

Section 1513.07(E)(7)(f)(iv) is amended by revising the phrase "surface mining bond, or security deposited" by adding the words "performance security" and "similar." As amended the phrase is as follows: "surface mining bond performance security or similar security deposited."

Section 1513.071(A) is amended by adding the words "of the division of mineral resources management" immediately following the word "chief" in the first sentence. Also in the first sentence, the word "his" is deleted and replaced by the words "the applicant's."

Section 1513.071(B) is amended by adding the words "the chief's" in place of the word "his" that is being deleted

in the third sentence. Also, the word "bond" is deleted and replaced by the word "security" in the second from last sentence.

Section 1513.08 has been amended by deleting some language and adding a lot of new language. As amended, section 1513.08 provides as follows:

Sec. 1513.08. (A) After a coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the chief of the division of mineral resources management, on a form prescribed and furnished by the chief, the performance security required under this section.

(B) Using the information contained in the permit application; the requirements contained in the approved permit and reclamation plan; and, after considering the topography, geology, hydrology, and the revegetation potential of the area of the approved permit, the probable difficulty of reclamation; the chief shall determine the estimated cost of reclamation under the initial term of the permit if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the applicant. The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security pursuant to division (C) of this section. Applicants for preparation plants or coal refuse disposal areas not located within the permit area of a producing mine shall provide performance security in accordance with division (C)(1) of this section in the full amount of the estimated cost of reclamation as determined by the chief.

(C) The applicant shall provide the performance security in an amount using one of the following methods:

(1) If the applicant elects to provide performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the amount of the estimated cost of reclamation as determined by the chief under division (B) of this section for the increments of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application;

(2) If the applicant elects to provide performance security together with reliance on the reclamation forfeiture fund through payment of the additional tax on the severance of coal that is levied under division (A)(8) of section

5749.02 of the Revised Code, an amount of twenty-five hundred dollars per acre of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application. In order to be eligible to rely upon the reclamation forfeiture fund for a portion of the performance security, the applicant must have held a permit to mine coal in Ohio for a minimum of five (5) years. In the event of forfeiture of performance security that was provided in accordance with division (C)(2) of this section, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under division (B) of this section shall be obtained from money in the reclamation forfeiture fund as needed to complete the reclamation. The performance security provided under division (C) of this section for the entire area to be mined under one permit issued under this chapter shall not be less than ten thousand dollars. The performance security shall cover areas of land affected by mining within or immediately adjacent to the permitted area, so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the chief additional performance security to cover the increments in accordance with this section. If a permittee intends to mine areas outside the approved permit area, the permittee shall provide additional performance security in accordance with this section to cover the areas to be mined.

If the performance security is required under this section for a coal preparation plant or coal refuse disposal area that is in existence on the effective date of this amendment and that is not located within a permitted area of a mine, the permittee shall provide the performance security not later than one year after the effective date of this amendment.

(D) A permittee's liability under the performance security shall be limited to the obligations established under the permit, which include completion of the reclamation plan in order to make the land capable of supporting the postmining land use that was approved in the permit. The period of liability under the performance security shall be

for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements under section 1513.16 of the Revised Code.

(E) The amount of a permittee's performance security may be adjusted by the chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. If performance security that was provided in accordance with division (C)(2) of this section and the chief has issued a failure to abate cessation order for non-contemporaneous reclamation on a permit, the chief may require that the performance security provided by the permittee on said permit be increased from twenty five hundred dollars per acre of land to the amount of five thousand dollars per acre of land. The chief shall notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed adjustment to the performance security. The permittee may request an informal conference with the chief concerning the proposed adjustment, and the chief shall provide such an informal conference. If the chief increases the amount of performance security under this division, the permittee shall provide additional performance security in an amount determined by the chief. If the chief decreases the amount of performance security under this division, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(F) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the division in the event of forfeiture of the performance security. The chief shall examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the chief determines that the performance security exceeds that estimated cost, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by

the chief. Adjustments in the amount of performance security under this division shall not be considered release of performance security and are not subject to section 1513.16 of the Revised Code.

(G) If the performance security is a bond, it shall be executed by the operator and a surety licensed to do business in this state. If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association shall be licensed and operating in this state. The cash deposit or market value of the securities shall be equal to or greater than the amount of the performance security required under this section. The chief shall review the performance security document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(H) If the performance security is a bond, the chief may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the chief the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(I) Performance security provided under this section may be held in trust, provided that the state is the conditional beneficiary of the trust and the custodian of the performance security held in trust is a bank, trust company, or other financial institution that is licensed and operating in this state. The chief shall review the trust document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(J) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this section becomes insolvent, the permittee shall notify the chief of the insolvency, and the chief shall order the permittee to submit a plan for replacement performance security within thirty days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(1) of this section, the permittee shall provide the replacement performance security within ninety days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(2) of this section, the permittee shall provide the replacement performance security within one year after receipt of notice from the chief, and, for a period of one year after the permittee's receipt

of notice from the chief or until the permittee provides the replacement performance security, whichever occurs first, money in the reclamation forfeiture fund shall be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the chief.

(K) A permittee's responsibility for repairing material damage resulting from subsidence, including replacement of water supplies, may be satisfied by utilizing appropriate terms and conditions for liability insurance required under this Chapter in lieu of the permittee's performance security to assure the financial responsibility to comply with this Chapter.

(L) If the performance security otherwise equals or exceeds that estimated cost of reclamation, the chief may authorize any interest or other earnings on the performance security provided under this section be paid to the permittee.

Section 1513.081 is new and provides as follows:

Sec. 1513.081. If an operator becomes insolvent, the division of mineral resources management shall have a priority lien in front of all other interested creditors against the assets of that operator for the amount of any reclamation that is required as a result of the operator's mining activities. The chief of the division of mineral resources management shall file a statement in the office of the county recorder of each county in which the mined land lies of the estimated cost to reclaim the land. Estimated costs shall include direct and indirect costs of the development, design, construction, management, and administration of the reclamation. The statement shall constitute a lien on the assets of the operator as of the date of the filing. The lien shall continue in force so long as any portion of the lien remains unpaid or until the chief issues a certificate of release of the lien. If the chief issues a certificate of release of the lien, the chief shall file a certificate of release in the office of each applicable county recorder.

(B) The chief promptly shall issue a certificate of release under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the transfer of an existing permit that includes the areas of the surface mine for which reclamation was not completed.

(3) Any other circumstances that the chief determines to be in the best interests of the state.

(C) The chief may modify the amount of a lien under this section. If the chief modifies a lien, the chief shall file a statement in the office of the county recorder of each applicable county of the new amount of the lien. However, the chief shall not extinguish a lien under this section until the required reclamation is completed and the chief issues a certificate approving the reclamation.

(D) The chief may authorize a closing agent to hold a certificate of release in escrow for a period not to exceed one hundred eighty days for the purpose of facilitating the transfer of unreclaimed mine land.

(E) All money from the collection of liens under this section shall be deposited in the state treasury to the credit of the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

Section 1513.16(A)(15)(d) is amended by deleting the word "bond" and adding in its place the words "performance security."

Section 1513.16(A)(21)(b) is amended by deleting the word "bonded" in the first sentence. In addition, the first sentence is amended by adding the words "for which performance security has been applied" at the end of the sentence.

Section 1513.16(F)(1) has been amended in the first sentence by deleting the words "bond or deposit" and replacing those words with the word "security." In the second sentence, the words "bond or deposit" are deleted and replaced by the words "performance security." In the third sentence, the word "bond" is deleted in two locations and replaced with the words "performance security." In the fourth and fifth sentences, the words "bond" are deleted and replaced with the words "performance security."

Section 1513.16(F)(2) is amended in the first sentence by deleting the words "bond or deposit" and replacing those words with the words "performance security." In the last sentence, the words "bond or deposit" are deleted and replaced by the word "security."

Section 1513.16(F)(3) is amended by deleting the words "bond or deposit" and replacing those words with the words "performance security."

Section 1513.16(F)(3)(a) is amended by deleting the words "a bonded" and replacing those words with the word "an." In addition, the words "for which performance security has been provided" have been added immediately before the words "in accordance with the approved reclamation plan." Also, the words "bond or deposit" are deleted in two

places and replaced with the words "performance security."

Section 1513.16(F)(3)(b) is amended by deleting the words "bond or deposit" and "bond" in several locations and replacing those words with the words "performance security."

Section 1513.16(F)(3)(c) is amended by deleting the words "bond" in several locations and replacing that word with the words "performance security" or "security."

Sections 1513.16(F)(4) through (F)(7) are amended by deleting the words "bond or deposit" and "bond" in several locations and replacing those words with the words "performance security" or "security."

Sections 1513.16(F)(8) and (F)(9) are new and provide as follows:

(8)(a) Except as provided in division (F)(8)(c) of this section, if the chief determines that a permittee is responsible for mine drainage that requires water treatment after reclamation is completed under the terms of the permit or that a permittee must provide an alternative water supply after reclamation is completed under the terms of the permit, the permittee shall provide alternative financial security in an amount determined by the chief prior to the release of the remaining portion of performance security under division (F)(3)(c) of this section. The alternative financial security shall be in an amount that is equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment or in an amount that is necessary to provide and maintain an alternative water supply, as applicable. The alternative financial security shall include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply, or both.

(b) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary for the administration of division (F)(8)(a) of this section.

(c) Division (F)(8)(a) of this section does not apply while the chief's determination of a permittee's responsibility under that division is the subject of a good faith administrative or judicial appeal contesting the validity of the determination. If after completion of the appeal there is an enforceable administrative or judicial decision affirming or modifying the chief's determination, the permittee shall provide the alternative financial security in an amount established in the administrative or judicial decision.

(9) Final release of the performance security in accordance with division (F)(3)(c) of this section terminates the jurisdiction of the chief under this chapter over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. The chief may reassert jurisdiction over such a site only if the chief demonstrates in writing with evidence that the release was based on fraud, collusion, or misrepresentation of a material fact. Any person with an interest that is or may be adversely affected by the chief's determination may appeal the determination to the reclamation commission in accordance with section 1513.13 of the Revised Code.

Section 1513.16(G) is amended by deleting the word "bond" and replacing that word with the words "performance security."

Section 1513.17(A)(6) is amended by deleting the word "bond" and replacing that word with the words "performance security."

Section 1513.171 is new and provides as follows:

Sec. 1513.171. (A) For the purpose of claiming a credit under section 5749.11 of the Revised Code, an operator with a valid permit issued under section 1513.07 of the Revised Code may submit an application to the chief of the division of mineral resources management to perform reclamation on land or water resources that are not within the area of the applicant's permit and that have been adversely affected by past coal mining where the performance security was forfeited. The chief shall provide the application form. The application shall include all of the following:

(1) The operator's name, address, and telephone number;

(2) The valid permit number of the operator;

(3) An identification of the area or areas to be reclaimed;

(4) An identification of the owner of the land;

(5) A reclamation plan that describes the work to be done to reclaim the land or water resources. The plan shall include a description of how the plan is consistent with local physical, environmental, and climatological conditions and the measures to be taken during the reclamation to ensure the protection of water systems.

(6) An estimate of the total cost of the reclamation;

(7) An estimate of the timetables for accomplishing the reclamation;

(8) Any other requirements that the chief prescribes by rule. The chief shall approve, disapprove, or approve the

application with modifications concerning the proposed reclamation work. If the chief approves the application, the applicant may commence reclamation in accordance with the timetables included in the application. Upon the completion of the reclamation to the satisfaction of the chief, the chief shall issue a numbered reclamation tax credit certificate showing the amount of the credit and the identity of the recipient.

(B) The chief shall determine the amount of the credit in accordance with this section and rules adopted under it. The amount of the credit shall be equal to the cost that the division of mineral resource management would have expended from the reclamation forfeiture fund created in section 1513.18 of the Revised Code to complete the reclamation.

(C) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to administer this section. The rules shall establish all of the following:

(1) A procedure that the chief shall use to determine the amount of the credit issued under this section;

(2) A procedure by which the chief may obtain consent of the owners of land or water resources to allow reclamation work for purposes of this section;

(3) A procedure for delivery of notice to the owners of land or water resources on which the reclamation work is to be performed. The rules shall require the notice to include the date on which the reclamation work is scheduled to begin.

Section 1513.18(B) is revised by deleting the following words in the first sentence: "moneys transferred to it under this division from the unclaimed lands fund created in section 1513.30 of the Revised Code, any." The first sentence is also revised by adding the following words following the phrase "reserve fund created in that section;" "investment earnings of the fund, fines collected under 1513.181." Additionally, the last sentence in the first paragraph is deleted. Finally, the last paragraph is deleted. As revised, section 1513.18(B) provides as follows:

(B) The fund shall consist of any moneys transferred to it under section 1513.181 [1513.18.1] of the Revised Code from the coal mining and reclamation reserve fund created in that section, investment earnings of the fund, fines collected under 1513.181 and moneys collected and reedited to it pursuant to section 5749.02 of the Revised Code. Disbursements from the fund shall be made by the chief for the purpose of reclaiming areas that an

operator has affected by mining and failed to reclaim under a coal mining and reclamation permit issued under this chapter or under a surface mining permit issued under Chapter 1514. of the Revised Code.

The chief may expend moneys from the fund to pay necessary administrative costs, including engineering and design services, incurred by the division of mineral resources management in reclaiming these areas. Expenditures from the fund to pay such administrative costs need not be made under contract.

Section 1513.18(C) is revised in the last sentence by adding the words "or trustee, if the performance security is held in trust" between the words "hired by the surety" and the words "to complete reclamation."

Section 1513.18(D) is revised by deleting some language and adding a lot of new language to provide as follows:

(D) The chief shall expend money credited to the reclamation forfeiture fund from the forfeiture of the performance security applicable to an area of land to pay for the cost of the reclamation of the land. If the performance security for the area of land was provided under division (C)(1) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter. If the performance security for the area of land was provided under division (C)(2) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter. However, if the money credited to the reclamation forfeiture fund from the forfeiture of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code is not sufficient to complete the reclamation, the chief may expend money credited to the reclamation

forfeiture fund under section 5749.02 of the Revised Code or transferred to the fund under section 1513.181 of the Revised Code to complete the reclamation. The chief shall not expend money from the fund in an amount that exceeds the difference between the amount of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code and the estimated cost of reclamation as determined by the chief under division (B) of that section.

Money from the reclamation forfeiture fund provided under division (C)(2) of section 1513.08 of the Revised Code shall not be used for reclamation of land or water resources affected by material damage from subsidence, mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit, or coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine.

Section 1513.18(E) is amended in the last sentence by deleting the word "bond" and replacing that word with the words "performance security."

Section 1513.18(H) is new and provides as follows:

(H) The treasurer of the state shall deposit any portion of the reclamation forfeiture fund not needed for immediate use in the same manner as and subject to all the laws with respect to the deposit of state funds by the treasurer of the state. All interest earned by such portion of the fund as is deposited under this section shall be collected by the treasurer of the state and placed in the reclamation forfeiture fund under section 1513.18 of the Revised Code and credited as performance security under division (C)(2) of section 1513.08 of the Revised Code.

Section 1513.181 is amended in the first paragraph by adding a new third sentence to provide as follows: "All investment earnings of the coal mining administration and reclamation reserve fund shall be credited to the fund." The fourth sentence (formerly third) is amended by deleting the following words: "or by surface mining under a surface mining permit issued under Chapter 1514. of the Revised Code." Additionally, the fourth sentence is amended by deleting the word "bond" and replacing that word with the words "performance security." The second paragraph is amended by deleting the phrase "coal mining administration and" and by deleting the word "reserve" and adding in its place the word "forfeiture." As amended, section 1513.181 provides as follows:

Sec. 1513.181. There is hereby created in the state treasury the coal mining administration and reclamation reserve fund. The fund shall be used for the administration and enforcement of this chapter. All investment earnings of the coal mining administration and reclamation reserve fund shall be credited to the fund. The chief of the division of mineral resources management may transfer not more than one million dollars annually from the fund to the reclamation forfeiture fund created in section 1513.18 of the

Revised Code to complete reclamation of lands affected by coal mining under a permit issued under this chapter, that the operator failed to reclaim and for which the operator's performance security is insufficient to complete the reclamation. Within ten days before or after the beginning of each calendar quarter, the chief may certify to the director of budget and management the amount of money needed to perform such reclamation during the quarter for transfer from the coal mining administration and reclamation reserve fund to the reclamation forfeiture fund.

Fines collected under division (E) of section 1513.02 and section 1513.99 of the Revised Code, and fines collected for a violation of section 2921.31 of the Revised Code that, prior to July 1, 1996, would have been a violation of division (G) of section 1513.17 of the Revised Code as it existed prior to that date, shall be paid into the reclamation forfeiture fund.

Section 1513.182 is new and provides as follows:

Sec. 1513.182. (A) There is hereby created the reclamation forfeiture fund advisory board consisting of five members. The Director of the Department of Natural Resources and the Director of the Department of Insurance shall be members. The governor shall appoint the remaining three members with the advice and consent of the senate. One member shall be a certified public accountant and two members shall be representatives of permittee's with permits covered by performance security provided in accordance with Section 1513.08(C)(2) of the Revised Code.

Of the three members originally appointed by the governor pursuant to this section, one shall serve an initial term of two years, one an initial term of three years, and one an initial term of four years. Thereafter, terms of office of the three members shall be for four years, each term ending on the same date as the original date of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. A vacancy in an unexpired term shall be filled in the same manner as the original appointment. The Governor may remove any member pursuant to sections 3.04 and 3.05 of the Revised Code.

Board members representing the Department of Natural Resources and

the Department of Insurance shall receive no compensation, but shall be reimbursed for actual and necessary expenses in the performance of their duties. The three remaining members of the board shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code and actual and necessary expenses incurred in the performance of their duties.

For administrative purposes, the board is a part of the Department of Natural Resources.

(B) The Board shall annually elect from among its members a chairperson, a vice-chairperson, and a secretary to keep a record of its proceedings;

(C) The Board shall hold meetings as necessary at the call of the chairperson or a majority of the members.

(D) The Board shall adopt rules and procedures by which it shall elect a chairperson, vice-chair person, and secretary, and establish procedures for conduct of meetings.

(E) The Board shall:

(1) Review, in accordance with the applicable rules and regulations, collections and payments to and expenditures from the reclamation forfeiture fund;

(2) Authorize expenditures from the reclamation forfeiture fund necessary to carry out the responsibilities of the Board and the reclamation of land or water resources that have been adversely affected by past coal mining where the performance security was forfeited;

(3) Periodically employ a qualified actuary to perform an actuarial study of the reclamation forfeiture fund;

(4) Evaluate bond forfeiture collection, payments to the reclamation forfeiture fund, reclamation efforts at forfeiture sites, and compliance with reclamation plans;

(5) Provide a forum for discussion of issues relative to the reclamation forfeiture fund;

(6) Determine, based upon an actuarial study, the minimum and maximum amounts of the reclamation forfeiture fund and adjustments to the tax on the severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code;

(7) Report to the Governor and the Joint Committee on Agency Rule Review ("JCARR") no less than biennially as to the financial status and adequacy of the reclamation forfeiture fund;

(8) Make recommendations to the Governor and the Joint Committee on Agency Rule Review ("JCARR") on alternative approaches and modifications to the reclamation forfeiture fund, the tax on severance of

coal that is levied under division (A)(8) of section 5749.02 of the Revised Code, and the reclamation of land or water resources that have been adversely affected by past coal mining where the performance security was forfeited;

(9) Adopt, amend, and rescind rules for implementing, adjusting, collecting, and administering the tax imposed under section 5749.02(A)(8) of the Revised Code. The adoption, amendment, and rescission of rules under divisions (E)(9) of this section are subject to Chapter 119 of the Revised Code.

Section 1513.29 is amended in the third paragraph by combining the first and second sentences by deleting the words "at least four regular quarterly meetings each year" at the end of the first sentence, and deleting the word "Special" at the beginning of the second sentence. Additionally, the words "may be held" are deleted and the words "as necessary" are added in place of the deleted words. As amended, the third paragraph provides as follows:

The council shall hold meetings as necessary at the call of the chairperson or a majority of the members. The council shall annually elect from among its members a chairperson, a vice-chairperson, and a secretary to keep a record of its proceedings.

The fourth paragraph is amended by deleting the words "strip mining" before the word "reclamation"; adding the word "forfeiture" after the word "reclamation"; and by adding the phrase "created in section 1513.18 of the Revised Code." As amended, the fourth paragraph provides as follows:

The council shall gather information, study, and make recommendations concerning the number of acres, location, ownership, condition, environmental damage resulting from the condition, cost of acquiring, reclaiming, and possible future uses and value of eroded lands within the state, including land affected by strip mining for which no cash is held in the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

The fifth paragraph is amended by deleting the phrase "of the division of mineral resources management" from the last sentence. As amended, the last sentence provides as follows: "Expenses incurred by the council and compensation provided under this section shall be paid by the chief from the unclaimed lands fund created in section 1513.30 of the Revised Code."

Section 1513.30 is amended by adding a new last sentence to the end of the first paragraph to read as follows: "All investment earnings of the

unreclaimed lands fund shall be credited to the fund."

Section 1513.30(B) is amended by deleting the second paragraph (starting with the words "At least two weeks") and the fourth paragraph (starting with the words "The controlling board").

Section 1513.37(C)(1)(b) is amended by adding the words "performance security" between the word "bond" and the words "or other form."

Section 1513.37(C)(3) is amended by adding the phrase "performance security, or other form of financial guarantee" in four locations. As amended, section 1513.37(C)(3) provides as follows:

(3) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for reclamation and restoration under this section after the release of the bond, performance security, or other form of financial guarantee for any such operation as provided under division (F) of section 1513.16 of the Revised Code. If the bond, performance security, or other form of financial guarantee for a surface coal mining operation on lands eligible for remining is forfeited, moneys available under this section may be used if the amount of the bond, performance security, or other form of financial guarantee for a surface coal mining operation on lands eligible for remining is forfeited, moneys available under this section may be used if the amount of the bond, performance security, or other form of financial guarantee is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant, the chief immediately shall exercise the authority granted under division (L) of this section.

Section 1513.371 is new and provides as follows:

Sec. 1513.371 There is hereby created in the state treasury the mined land set aside fund consisting of grants made by the United States secretary of the interior from the Federal abandoned mine reclamation fund pursuant to section 402(g)(6)(A), 30 U.S.C. 1232(g)(6)(A), of the "Surface Mining, Control and Reclamation Act of 1977." 91 Stat. 445, 30 U.S.C. 1201. The chief of the division of mineral resources management shall administer the mined land set aside fund. Money in the fund shall be used solely to accomplish the purposes and priorities established in divisions (B)(1) to (4) of section 1513.37 of the Revised Code. All investment earnings of the mined land set aside fund shall be credited to the fund.

Section 1561.03 is amended by adding a new second paragraph to provide as follows:

For the purpose of establishing standards governing surface coal mines and surface work areas of underground coal mines, the chief shall incorporate by reference 30 CFR parts 47, 48, 50, 62, 71, 72, and 77, as amended.

Section 1567.35(E) is amended by deleting the word "worker's" and adding in its place the word "worker."

Section 1567.35(I) is amended by deleting the word "such" and adding the word "the" in its place. In addition, a new second paragraph is added to provide as follows:

Nothing in this section shall be construed to prohibit or impede the use of diesel equipment in an underground coal mine, approved for such use in accordance with Federal law.

Section 5749.02(A)(1) is amended by changing "Seven cents per ton of coal" to "Ten cents per ton of coal."

Section 5749.02(A)(8) is new and provides as follows:

(8) An additional Fourteen cents per ton of coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513 of the Revised Code for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code. Provided however, that:

(a) When at the end of any fiscal biennium, the balance in the reclamation forfeiture fund under section 1513.18 of the Revised Code reaches the maximum amount of ten million dollars (\$10,000,000), the tax imposed by this section shall be reduced to Twelve cents per ton, until the balance in the reclamation forfeiture fund at the end of a subsequent fiscal biennium decreases to five million dollars (\$5,000,000), at which point the tax imposed by this section shall be restored to Fourteen cents per ton;

(b) When at the end of any fiscal biennium, the balance in the reclamation forfeiture fund under section 1513.18 of the Revised Code is below the minimum amount of five million dollars (\$5,000,000), the tax imposed by this section shall be increased to Sixteen cents per ton, until the balance in the reclamation forfeiture fund at the end of a subsequent fiscal biennium increases to five million dollars (\$5,000,000), at which point the tax imposed by this section shall be restored to Fourteen cents per ton;

(c) If an actuarial study performed pursuant to section 1513.182(E) of the Revised Code indicates that the minimum amount necessary to operate a[n] actuarially sound reclamation forfeiture fund differs from five million dollars (\$5,000,000), then the minimum and maximum amounts of the fund as provided in divisions (a) and (b) of this

section shall automatically be adjusted to conform to the actuarial study.

(d) The reclamation forfeiture fund advisory board, established under section 1513.182 of the Revised Code, shall have authority to adopt, amend, and rescind rules for adjusting, collecting, and administering the tax imposed under this division (A)(8) of this section, including increasing or decreasing the amount of tax imposed based upon the fiscal year ending balance in the reclamation forfeiture fund under section 1513.18 of the Revised Code, an actuarial study performed pursuant to section 1513.182(E) of the Revised Code, and the fiscal requirements of the reclamation forfeiture fund to ensure sufficient revenues to provide adequate funds on an actuarial basis to provide performance security under division (C)(2) of section 1513.08 of the Revised Code. The adoption, amendment, and rescission of rules under divisions (A)(8) of this section are subject to Chapter 119 of the Revised Code.

Section 5749.02(B) is amended in the first sentence by deleting the phrase "six and three tenths" and adding in its place the word "five." In the first sentence, the following words are deleted, "fourteen and two tenths per cent shall be credited to the reclamation forfeiture fund created in section 1513.18 of the Revised Code, fifty seven and nine tenths" and replaced by the words "eighty-five." Also in the first sentence, the words "the remainder" are deleted and replaced by the words "ten per cent." The existing second sentence (starting with the words "When, at any time") is deleted. The second paragraph is amended by adding the words "created in section 1513.30 of the Revised Code" at the end of the sentence. Finally, a new paragraph is added at the end of section 5749.02(B). As amended, section 5749.02(B) provides as follows:

(B) Of the moneys received by the treasurer of state from the tax levied in division (A)(1) of this section, five per cent shall be credited to the geological mapping fund created in section 1505.09 of the Revised Code eighty-five per cent shall be credited to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code, and ten per cent shall be credited to the unreclaimed lands fund created in section 1513.30 of the Revised Code.

Fifteen per cent of the moneys received by the treasurer of state from the tax levied in division (A)(2) of this section shall be credited to the geological mapping fund and the remainder shall be credited to the

unreclaimed lands fund created in section 1513.30 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(3) and (4) of this section, seven and five-tenths per cent shall be credited to the geological mapping fund, forty-two and five-tenths per cent shall be credited to the unreclaimed lands fund, and the remainder shall be credited to the surface mining fund created in section 1514.06 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of this section, ninety per cent shall be credited to the oil and gas well fund created in section 1509.02 of the Revised Code and ten per cent shall be credited to the geological mapping fund. All of the moneys received by the treasurer of state from the tax levied in division (A)(7) of this section shall be credited to the surface mining fund.

Of the moneys received by the treasurer of state from the tax levied in division (A)(8) of this section, one-hundred percent shall be credited to the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

Section 5749.02(C) is amended by deleting the existing language and incorporating the language of subsection (D) that is not deleted.

Section 5749.02(D) is amended by deleting the first paragraph. In the second paragraph, the first sentence is amended by deleting the word "this" immediately before the word "division," and by adding the phrase "(A)(8) of this section" immediately after the word "division." Also, the first sentence is amended by deleting the word "such," adding the phrase "for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code," deleting the word "this," and adding the words "(A)(8) of this section." The second sentence in the existing second paragraph is amended by adding the words "levied under division (A)(8)" and by adding the following to the end of the sentence: "on coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years." Finally, the existing designation "(D)" is deleted, so that its language is incorporated into subsection 5749.02(C). As amended, new subsection 5749.02(C) provides as follows:

(C) When, at the close of any fiscal year, the chief finds that the balance of the reclamation forfeiture fund, plus

estimated transfers to it from the coal mining and reclamation reserve fund under section 1513.181 [1513.18.1] of the Revised Code, plus the estimated revenues from the tax levied by division (A)(8) of this section for the remainder of the calendar year that includes the close of the fiscal year, are sufficient to complete the reclamation of lands for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code, the purposes for which the tax under division (A)(8) of this section is levied shall be deemed accomplished at the end of that calendar year. The chief, within thirty days after the close of the fiscal year, shall certify those findings to the tax commissioner, and the tax levied under division (A)(8) of this section shall cease to be imposed after the last day of that calendar year on coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years.

Section 5749.11 is new and provides as follows:

Sec. 5749.11. (A) There is hereby allowed a nonrefundable credit against the taxes imposed under divisions (A)(1), (C), and (D) of section 5749.02 of the Revised Code for any severer to which a reclamation tax credit certificate is issued under section 1513.171 of the Revised Code. The credit shall be claimed in the amount shown on the certificate. The credit shall be claimed by deducting the amount of the credit from the amount of the first tax payment due under section 5749.06 of the Revised Code after the certificate is issued. If a certificate is transferred under division (B) of this section, the credit shall be claimed by the transferee by deducting the amount of the credit from the amount of the transferee's first tax payment due after the certificate is transferred.

If the amount of the credit shown on a certificate exceeds the amount of the tax otherwise due with that first payment, the excess shall be claimed against the amount of tax otherwise due on succeeding payment dates until the entire credit amount has been deducted. The total amount of credit claimed against payments shall not exceed the total amount of credit shown on the certificate.

(B) A severer receiving a reclamation tax credit certificate issued under section 1513.171 of the Revised Code may transfer the certificate to any other severer that is subject to taxation under division (A)(1), (C), or (D) of section

5749.02 of the Revised Code and holds a license or permit issued under or referred to in section 5749.04 of the Revised Code. The transferee of a certificate may transfer the certificate to any other severer that is subject to such taxes and holds such a license or permit. A transfer of a certificate shall be made before the due date of the transferor's first tax payment occurring after the certificate is received by the transferor pursuant to issuance of the certificate by the chief of the division of mineral resources management in the department of natural resources or pursuant to a prior transfer.

Transfers may be made for consideration or pursuant to terms agreed to by the transferor and transferee. If the severer transfers a certificate, the severer shall provide to the tax commissioner written notification of the transfer in the form or manner prescribed by the tax commissioner. The notification shall include, at a minimum, the identity of the severer and the number of the certificate issued by the chief of the division of mineral resources management under section 1513.171 of the Revised Code. The tax commissioner shall maintain a record of all transfers of which the commissioner is notified.

(C) A severer claiming a credit under this section shall retain a reclamation tax credit certificate for not less than four years following the date of the last tax payment against which the credit allowed under that certificate was applied. Severers shall make tax credit certificates available for inspection by the tax commissioner upon the tax commissioner's request.

Section 2 of the amendment submittal provides as follows:

Section 2. That existing sections 303.211, 519.211, 1513.01, 1513.02, 1513.07, 1513.071, 1513.08, 1513.13, 1513.16, 1513.17, 1513.18, 1513.181, 1513.29, 1513.30, 1513.37, 1567.35, and 5749.02 of the Revised Code are hereby repealed.

Section 3 of the amendment submittal provides as follows:

Section 3. It is the intent of the General Assembly to appropriate five million dollars for the reclamation of land affected by the surface mining of coal.

Section 4 of the amendment submittal provides as follows:

Section 4. It is the intent of the General Assembly that a portion of the funds appropriated pursuant to this section be used to complete a management study of the financial resources of the coal regulatory program of the Division of Mineral Resources Management within the Department of

Natural Resources. The Chief of the Division of Mineral Resources Management shall, in consultation with a trade group representing the coal mining industry and a state-wide non-governmental environmental organization, shall develop the parameters for the management study. The cost of the study shall not exceed \$50,000.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the program.

#### Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Region office identified above may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. OH-250-FOR," your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Region office at (412) 937-2153.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public review in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time, on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

#### Executive Order 12866—Regulatory Planning and Review

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

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by

section 3 of Executive Order 12988 and has determined that, to the extent allowable 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 the Federal regulations at 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.

#### Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

**Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy**

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*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 that 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.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*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.

Dated: January 3, 2006.

**Brent Wahlquist,**

*Regional Director, Appalachian Region.*

[FR Doc. E6-1990 Filed 2-10-06; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 944**

**[UT-043-FOR]**

**Utah Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposes revisions to the Utah Administrative Rules concerning permit change, renewal, transfer, sale and assignment, cross sections and maps, processing and approval of extensions to the approved permit area, determining civil penalty amounts, and assessing daily civil penalties. Utah intends to revise its program to clarify and strengthen certain parts of the rules.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t. March 15, 2006. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., m.s.t. on February 28, 2006.

**ADDRESSES:** You may submit comments, identified by docket number UT-043-FOR, by any of the following methods:

- E-mail: [jfulton@osmre.gov](mailto:jfulton@osmre.gov). Include "UT-043-FOR" in the subject line of the message;

- Mail: James F. Fulton, Chief, Denver Field Division, Western Region, Office of Surface Mining, P.O. Box 46667, 1999 Broadway, Suite 3320, Denver, Colorado 80201-6667;

- Courier/Hand Delivery: James F. Fulton, Chief, Denver Field Division, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733; and

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number UT-043-FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733. Telephone: (303) 844-1400, extension 1424. E-mail: [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

John R. Baza, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801. Telephone: (801) 538-5340. Internet: <http://www.ogm.utah.gov>.

**FOR FURTHER INFORMATION CONTACT:**

James F. Fulton, Chief, Denver Field Division; Telephone: (303) 844-1400, extension 1424; E-mail: [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

**SUPPLEMENTARY INFORMATION:**