

written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 13, 2007, at 10 a.m. in the auditorium of the Internal Revenue Service, New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. Due to building security procedures, visitors must enter at the New Carrollton Federal Building main entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by January 16, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal, Vicky Tsilas, and Carla Young, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.141-4(e)(5) is revised to read as follows:

#### § 1.141-4 Private Security or Payment Test.

\* \* \* \* \*

(e) \* \* \*

(5) *Payments in lieu of taxes*—(i) *In general.* A tax equivalency payment or other payment in lieu of a tax (PILOT) is treated as a generally applicable tax if—

(A) The payment is commensurate with and not greater than the amounts imposed by a statute for a generally applicable tax in each year; and

(B) The payment is designated for a public purpose and is not a special charge (as described in paragraph (e)(3) of this section).

(ii) *Commensurate standard.* For purposes of this paragraph (e)(5), a payment is “commensurate” with generally applicable taxes only if the amount of such payment represents a fixed percentage of, or reflects a fixed adjustment to, the amount of generally applicable taxes that otherwise would apply to the property in each year if the property were subject to tax. For example, a payment is commensurate with generally applicable taxes if it is equal to the amount of generally applicable taxes in each year, less a fixed dollar amount or a fixed adjustment determined by reference to characteristics of the property, such as size or employment. A payment does not fail to be a fixed percentage or adjustment as a result of a single change in the level of the percentage or adjustment following completion of development of the subject property. The payment must be based on the current assessed value of the property for property tax purposes for each year in which the PILOTs are paid and that assessed value must be determined in the same manner and with the same frequency as property subject to generally applicable taxes. A payment is not commensurate if it is based in any way on debt service on an issue or is otherwise set at a fixed dollar amount that cannot vary with the assessed value of the property determined in the manner described in this paragraph (e)(5)(ii).

\* \* \* \* \*

**Par. 3.** Section 1.141-15 is amended by adding paragraph (m) to read as follows:

#### § 1.141-15 Effective dates.

\* \* \* \* \*

(m) *Effective date for certain regulations relating to payments in lieu of tax.* The rules of § 1.141-4(e)(5) apply to bonds sold on or after [DATE THAT IS 120 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE **Federal Register**] that are subject to section 141.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-251-FOR]

#### Ohio 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 (OSM) are 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). The proposed amendment consists of a request from Ohio to withdraw portions of a prior amendment to the Ohio program that OSM approved. The prior amendment pertained to clarification of certain Conflict of Interest provisions. Although OSM approved the amendment in 1995, Ohio has not promulgated the approved regulations through their rule-making process and has now decided the approved changes are not necessary.

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:** We will accept written comments on this amendment until 4 p.m., (local time), November 20, 2006. If requested, we will hold a public hearing on the amendment on November 13, 2006. We will accept requests to speak at a hearing until 4 p.m., local time, on November 3, 2006.

**ADDRESSES:** You may submit comments, identified by OH-251-FOR, by any of the following methods:

- E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov). Include OH-251-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 August 30, 2006, Ohio sent us a proposed amendment to its program (Administrative Record Number OH-2187-00) under SMCRA (30 U.S.C. 1201 *et seq.*). In its letter, Ohio stated that it has reviewed revisions previously proposed by Ohio in Program Amendment #69. Ohio stated that those components of program amendment #69 related to Conflict of Interest are no longer necessary, and it would like to withdraw those program provisions from consideration at this time. OSM approved the provisions proposed in program amendment #69 (including the subsequent revisions) in the **Federal Register** on July 17, 1995 (60 FR 36352). However, Ohio did not promulgate the approved draft regulations in final form.

Because we have already published our approval of the Conflict of Interest provisions that Ohio has requested be withdrawn from consideration, we are unable to merely withdraw those provisions. Rather, we are seeking public comment on whether the removal of the provisions identified below will render the approved Ohio program less effective than SMCRA and the Federal regulations.

Ohio program amendment #69 was originally submitted by Ohio by letter dated September 22, 1994 (Administrative Record Number OH-2059). Revisions to amendment #69 were subsequently submitted by letters dated March 8, 1995, and May 3, 1995 (Administrative Record Numbers OH-2099 and OH-2115, respectively). We announced receipt of the proposed amendments, and the two revisions, in the October 21, 1994; March 17, 1995; and May 12, 1995; **Federal Register** (59 FR 53122, 60 FR 14401, and 60 FR

25660, respectively). The Conflict of Interest provisions that we approved on July 17, 1995, and that Ohio proposes be removed from the approved Ohio program, are identified below.

*Financial Interest Statements (OAC [Ohio Administrative Code] Section 1501:13-1-03)*

1. Definition of "Employee"

Ohio proposed to revise paragraph (D)(2) to provide that members of the Ohio Board on Unreclaimed Strip Mined Lands are included under the definition of "employee." Ohio also proposed to revise this paragraph to provide that, for the purposes of OAC Section 1501:13-1-03, hearing officers for the Ohio Reclamation Board of Review shall also be included within the definition of "employee." Ohio also proposed to revise paragraphs (L)(1) and (2) to delete separate references to the Reclamation Board of Review's hearing officers because those hearing officers are to be included under the definition of "employee" in this rule. In our July 17, 1995, approval of these revisions, OSM stated that "the inclusion of these persons under the State definition of "employee" is appropriate and no less effective than the corresponding Federal definition."

2. Use of Financial Interest Statement Form by Members of the Ohio Reclamation Board of Review

Ohio proposed to revise paragraph (I)(1) to require that employees and members of the Ohio Reclamation Board of Review report all required information concerning employment and financial interests on Form OSM-23. In our July 17, 1995, approval of these revisions, OSM stated that "\* \* \* Ohio's requirement that its employees and members of the Ohio Reclamation Board of Review file employment and financial interest statements using OSM Form 23 is no less effective than the corresponding Federal regulations at 30 CFR 705.10 and 705.11."

3. Acceptance of Gifts and Gratuities by Members of the Ohio Reclamation Board of Review

Ohio proposed to revise paragraph (J)(1) to prohibit, with certain exceptions, the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review from coal companies which are conducting or seeking to conduct regulated activities or which have an interest that may be substantially affected by the performance of the Board members' official duty. In our July 17, 1995, approval of these revisions, OSM

stated that “\* \* \* the State requirement regarding members of the Ohio Reclamation Board of Review is not inconsistent with the Federal regulations at 30 CFR 705.18 or with the revisions which Ohio is making elsewhere in this rule.”

#### 4. Appeal of Remedial Actions

Ohio proposed to revise paragraph (L)(1) to specify that nothing in OAC Section 1501:13-1-03 modifies any right of appeal that any employee may have under State law of a decision by the Chief of the Division of Natural Resources, on an employee's appeal of remedial action for prohibited financial interests. In our July 17, 1995, approval of this revision, OSM stated that “\* \* \* this provision is not inconsistent with the Federal rule at 30 CFR 705.21(a) which allows employees to file an appeal through established procedures within their State.”

Ohio also proposed to revise paragraph (L)(2) to provide that only the Chief of the Division of Reclamation may appeal a remedial action to the Director of OSM. In our July 17, 1995, approval of this revision, OSM stated that “Ohio's proposed paragraph (L)(2) is not less effective than 30 CFR 705.21(b).”

Ohio also added paragraph (L)(3) to provide that members of the Ohio Reclamation Board of Review may request advisory opinions from the Director of OSM on issues pertaining to an apparent prohibited financial interest. However, resolution of conflicts is governed by section 1513.05 and 1513.29 of the Ohio Revised Code. In our July 17, 1995, approval of this new language, OSM stated that “\* \* \* the appeal provision proposed in paragraph (L)(3) is not inconsistent with the Federal regulations at 30 CFR 705.21 or with the revisions which Ohio is making elsewhere in this rule.”

### 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 removal of these amendments, they will no longer be part of the approved Ohio 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 will 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-251-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 November 3, 2006.

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: September 29, 2006.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Region.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD01-06-122]

RIN 1625-AA09

**Drawbridge Operation Regulations; Thames River, New London, CT**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Amtrak Bridge across the Thames River, mile 0.8, at New London, Connecticut. This notice of proposed rulemaking (NPRM) would allow the bridge owner to open the bridge on a temporary opening schedule from November 15, 2006 through May 15, 2007. This proposed rule is necessary to facilitate bridge pier repairs.

**DATES:** Comments must reach the Coast Guard on or before November 1, 2006.

**ADDRESSES:** You may mail comments to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668-7195.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for publishing an NPRM with a shortened comment period of 15 days, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the urgency of the repairs, it is essential that this rule becomes effective on November 15, 2006.