

remaining foreign and domestic laboratories prior to the implementation of the Consumer Product Safety Improvement Act.) CPSC staff visited the following laboratories:

- (1) Underwriters Laboratories (UL), in Northbrook, IL;
- (2) Stork Twin City Testing Corporation, in St. Paul, MN;
- (3) Govmark Organization, in Farmingdale, NY;
- (4) SGS US Testing, in Tulsa, OK;
- (5) Southwest Research Institute, in San Antonio, TX;
- (6) Intertek, in Elmendorf, TX; and
- (7) Chilworth, in Kelso, WA.

CPSC staff has confidence that these laboratories can conduct the tests required by the mattress Standard properly because of these field visits and also on the basis of our review of test results submitted to the CPSC since 2007, and, in some instances, verification of the test results by our own independent testing of mattresses built from prototypes tested by these laboratories. Therefore, we will accept children's product certifications based on third party conformity assessment body testing by any of the seven laboratories listed above provided that:

- The laboratory will be ISO/IEC 17025 accredited by an accreditation body that is a signatory to the ILAC-MRA, and the accreditation scope will expressly include testing to 16 CFR part 1632 and/or 1633 by November 16, 2010;
- Testing was conducted on or after July 1, 2007, but not later than November 16, 2010; and
- The test results show compliance with the applicable current standards and/or regulations.

### C. The Request for an Extended Compliance Period

Both the ISPA and the Springs Creative Products Group sought an additional one year for manufacturers to comply with the third party testing requirement. Both referred to costs and to the cigarettes to be used in the tests.

We decline to extend the time by which manufacturers must engage in third party testing. We believe that our revised position regarding our "Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation" substantially reduces or eliminates the need to retest products. More importantly, however, we note that section 14(a)(3)(F) of the CPSA expressly declares that:

If the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to

permit certification for a children's product safety rule \* \* \* the Commission may extend the deadline for certification to such rule by not more than 60 days.

Thus, the conditions set forth in section 14(a)(3)(F) of the CPSA have not been met. We do not have information suggesting that there are an insufficient number of third party conformity assessment bodies to conduct tests pursuant to 16 CFR parts 1632 and/or 1633. While we recognize that third party testing may present economic issues for certain manufacturers as described in the ISPA submissions and subsequent meetings, section 14(a)(3)(F) of the CPSA does not authorize us to consider cost or the past or present state of the national economy as reasons for extending the deadline for certification. Additionally, the statute specifically allows for extension "not more than 60 days"; therefore, the one-year extension sought by the ISPA and Springs Creative Product Group would not be possible under section 14(a)(3)(F) of the CPSA.

Dated: November 19, 2010.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2010-29861 Filed 11-26-10; 8:45 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-253-FOR; Docket ID OSM-2009-0001]

#### Ohio Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Ohio regulatory program (the "Ohio program") regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment that we are approving involves changes to Ohio's internal and procedural rules arising from a five-year review of the rules. The changes relate to practice and procedures before the reclamation commission, including definitions, commission meetings, appearance and practice before the commission; appeals to the reclamation commission; filing and service of papers; temporary relief; responsive pleadings; discovery; motions; pre-hearing procedures; notice

of hearings and continuance of hearings; site views and location of hearings; conduct of evidentiary hearings; reports and recommendations of the hearing officer; and decisions of the commission.

**DATES:** *Effective Date:* This rule is effective November 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Chief, Pittsburgh Field Division, Columbus Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (614) 416-2238, e-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program
- II. Description and Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. 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 State 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).

You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval in the August 16, 1982, **Federal Register** (47 FR 34688). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

#### II. Description and Submission of the Amendment

By letter dated January 22, 2009, and received on January 23, 2009, (Administrative Record No. OH-2188-01), Ohio sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment includes revisions to its regulations (Ohio Administrative Code).

Pursuant to Ohio Revised Code 119.032, all State agencies must review their internal and procedural rules every five years. In response to this requirement, the Ohio Reclamation Commission reviewed its procedural rules. The Commission's procedural rules are found at Ohio Administrative Code 1513-3-01 through 1513-3-22.

This amendment contains the changes made to the Ohio Administrative Code as a result of this review. Changes relate to practice and procedures before the reclamation commission, including definitions; commission meetings; appearance and practice before the commission; appeals to the reclamation commission; filing and service of papers; temporary relief; responsive pleadings; discovery; motions; pre-hearing procedures; notice of hearings and continuance of hearings; site views and location of hearings; conduct of evidentiary hearings; reports and recommendations of the hearing officer; and decisions of the commission. These changes are identified below, with additions italicized and deletions bracketed:

1513-3-01: Definitions.

(N) "*Regular business hours*" for the reclamation commission means 10:00 a.m. to 6:00 p.m. Monday through Friday, except for State holidays or other days in which offices of the government of the State of Ohio are permitted to close due to weather, safety or other unforeseeable events which present a risk to the public or to the commission employees. In the event of the absence of the office staff, contact information for the chairman and vice-chairman of the commission will be prominently posted at the commission offices.

[(N)](O) "Rules of the reclamation commission" means rules 1513-3-01 to 1513-3-22 of the Administrative code and shall apply to appeals filed under both Chapters 1513 and 1514. of the Revised code, unless specifically provided otherwise.

1513-3-02: Internal regulations.

(B) Four members constitute a quorum, and no action of the commission shall be valid unless it has the concurrence of at least four members. Where, in rendering a decision, a concurrence of at least four commission members is not obtained, the existing record of proceedings may be submitted to any absent commission member, who will be permitted to participate in the rendering of the decision. [at a subsequent commission meeting.]

1513-3-02: Internal regulations.

(D) Pursuant to section 1513.05 of the Revised code, the reclamation commission shall elect [may appoint] a secretary, who shall perform such duties as the commission prescribes, including:

1513-3-02: Internal regulations.

(D)(4) Providing notice of all public meetings [hearings] of the reclamation commission in accordance with the following procedures:

(a) Any person may determine the time and place of *regularly-scheduled public meetings* [hearings or the time and place of any temporary relief hearings] by contacting the office of the reclamation commission during *regular business hours*;

(b) Upon request, any person may obtain advance notice of all *regularly-scheduled public meetings* [hearings] by supplying the office of the reclamation commission with stamped, self-addressed envelopes. The office will mail to such person a notice of the time and place of *meetings* [hearings] at least four calendar days before the *meeting* [hearing] is scheduled; [unless the hearing is a temporary relief hearing;]

(c) The reclamation commission shall provide the office of the reclamation commission with the time and place of *meetings* [hearings] requiring public notice under the provisions of this rule within sufficient time to enable the office to comply with the provisions of this rule.

(d) *The time and location for commission meetings shall be announced in the Hannah Report published by Rotunda, Inc.*

1513-3-02: Internal regulations.

(H) Any [The] transcript [or recording] of a [any] proceeding before the commission, if filed with the commission [shall be the property of the commission and] shall be made available for reproduction upon application to the commission and payment of reproduction costs.

(I) Issuance of subpoenas.

(1) Upon request of a party, or at the initiative of the commission, the commission shall issue subpoenas ad testificandum or duces tecum.

1513-3-03: Appearance and practice before the commission.

(C) *Except as prohibited by section 4705.01 of the Revised code, any party may appear on his own behalf or may be represented by an attorney at law admitted to practice before the Supreme Court of Ohio, or by an attorney admitted to practice by the commission pursuant to a motion to appear pro hac vice.* [In the absence of an attorney, a party may represent itself, a partnership may be represented by any of its members, a corporation or association may be represented by any of its officers and any governmental unit may be represented by an employee offering proof of authority.]

1513-3-04: Appeals to the reclamation commission.

(B) A notice of appeal must:

(7) Pursuant to section 1513.13 of the Revised Code, identify [Identify] the grounds upon which review is being sought, the manner in which appellant

is aggrieved or adversely affected by the action of the chief of the division of mineral resources management and the relief sought on appeal;

1513-3-05: Filing and service of papers.

(H) If papers filed with the commission cite case law as authority in support of argument, the filing must include a copy of the case law cited and must refer to the page number or paragraph on which the relevant language is found.

1513-3-08: Temporary Relief.

(F) The decision of the chairman of the reclamation commission to grant or deny temporary relief may be appealed to the [full] commission, including the chairman who decided temporary relief, within thirty days after the chairman's issuance of the decision in accordance with the provisions of section 1513.13 of the Revised Code. The [full]-commission may confine its review to the record developed at the temporary relief hearing conducted by the chairman. The [full] commission shall affirm the decision of the chairman, unless it determines that the chairman's decision is arbitrary, capricious, or otherwise inconsistent with law.

1513-3-09: Responsive pleadings.

(B) Unless the commission orders otherwise, the party ordered to file a response pursuant to this rule shall have ten days from the issuance of the commission's order to make such filing.

[(B)](C) Failure to respond when ordered may be treated as a failure to appear at hearing.

1513-3-10: Discovery.

(C) Discovery shall be conducted in accordance with the procedural provisions of the "Ohio Rules of Civil Procedure." Discovery may include oral depositions, written interrogatories to parties, inspection of premises, requests for admission, and inspection of documents. [not privileged.]

1513-3-11: Motions.

(A) Except for oral motions which must be made in proceedings on the record, or where the commission otherwise directs, any motion made to the reclamation commission shall:

(4) Be filed with the commission and served upon all parties to the proceeding at least ten [five] days in advance of the hearing, unless the movant demonstrates that unusual circumstances exist justifying an exception to this rule.

1513-3-11: Motions.

(C) Motions for reconsideration of any decision of the commission shall be made in writing within ten [fourteen] days after the issuance of the commission's decision. A motion for reconsideration shall state with

particularity the grounds on which it is based. The filing of a motion for reconsideration does not extend the time for filing a notice of appeal in the appellate court.

1513-3-11: Motions.

(E) In compliance with the requirements of 1513-3-13(C)(2), motions for continuance of a hearing must be filed with the reclamation commission and served upon all parties to a proceeding at least fourteen days in advance of a hearing.

[(E)](F) Unless the commission orders otherwise, any party to a proceeding shall have ten days from service of the motion or until hearing, whichever is earlier, to file a response to a motion.

[(F)](G) Failure to make a timely motion or to file a statement in response to a motion may be construed as a waiver of objection.

1513-3-12: Pre-hearing procedures.

(A) The reclamation commission, or its hearing officer, may schedule and hold pre-hearing conferences for settlement or simplification of the issues in any appeal.

(B) Whenever a pre-hearing conference is held, the commission, or its hearing officer, may issue an order which recites the matters discussed, the agreements reached, and the rulings made at the pre-hearing conference.

(C) The commission, or its hearing officer, may require the filing of a pre-hearing statement by the parties to an appeal.

1513-3-13: Notice of hearings and continuance of hearings.

(C) Continuance of scheduled hearings.

(2) Motions for continuance of a hearing must be filed with the reclamation commission and served upon all parties to a proceeding at least fourteen [five] days in advance of a hearing.

(3) Motions for continuance made less than fourteen [five] days before hearing or at hearing shall be granted only upon demonstration that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.

1513-3-14: Site views and location of hearings.

(A) Site views.

(2) Subject to any applicable safety requirements, the [The] commission may, upon reasonable notice and at reasonable times, inspect any site or other premises when the commission is of the opinion that such a viewing would have a beneficial value in any matter pending before the commission.

(3) [Unless the right to a site view is statutorily prescribed, a] A quorum of commission members need not attend a site view.

(4) All parties shall have prior notice of a site view and shall have the right to be present. *Parties shall be informed of any safety requirements prior to the site view. The commission may limit the number of persons, which may accompany a party at a site view.*

1513-3-16: Conduct of evidentiary hearings.

(E) Written testimony.

(2) The use of a deposition in lieu of the [dependent's] *deponent's* oral testimony at hearing shall be allowed under the same provisions as are articulated in rule 32 of the "Ohio Rules of Civil Procedure." A party desiring to use a deposition, or any designated part thereof, at hearing shall file the deposition with the commission and serve written notice to every other party at least five days prior to hearing.

(F) Witnesses.

(2) The commission may require each party in an appeal to identify prior to the commencement of a hearing each person who is or may be present and [in] his interest or who will or may be a witness for his cause in the appeal.

(G) If the appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled after being duly notified of the hearing by the mailing of a notice of hearing to such party's last known address, and if good cause for such failure to *appear* [appeal] is not shown, the commission shall dismiss the appeal.

(I) The reclamation commission may order the parties to a proceeding to submit post-hearing briefs or proposed findings of fact and conclusions of law at a time designated by the commission, on issues raised on the appeal or upon possible errors or omissions in the record or on any issues as the commission in its discretion shall determine. The commission may also order the parties to submit written closing arguments or *proposed findings of fact and conclusions of law* at the conclusion of hearing.

1513-3-18: Reports and recommendations of the hearing officer.

(F) Any party to a proceeding may have [seven] *fourteen* days from service of the objections to the report and recommendation of the hearing officer to file a response.

1513-3-19: Decisions of the commission.

(A) All decisions of the commission shall [incorporate] *set forth*:

(1) Findings of fact;

(2) Conclusions of law; and

(3) An order granting or denying relief.

1513-3-19: Decisions of the commission.

(F) Remission of prepaid civil penalty assessments.

(1) If a review of a civil penalty assessment results in an order reducing or eliminating a civil penalty, the reclamation commission shall remit the funds to the appellant in accordance with division [(F)](E) of section 1513.02 of the Revised Code.

### III. OSM's Findings

We are approving the amendment request under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Changes for which no findings are made below involve clarifications and non-substantive corrections of punctuation, typos, and errors in references.

1513-3-01: Definitions. These changes involve the addition of a description of regular business hours for the reclamation commission and subsequent paragraph renumbering. While this provision has no Federal counterpart, we find that it is not inconsistent with the Federal regulations at 43 CFR part 4, pertaining to the Office of Hearings and Appeals, and is therefore approved.

1513-3-02: Internal regulations. The changes to 1513-3-02(B) and (D) pertain to the Commission's procedural rules regarding quorums and the election of the secretary. While these provisions have no Federal counterpart, we find that they are not inconsistent with the Federal regulations at 43 CFR part 4, and are therefore approved.

1513-3-02: Internal regulations. The changes to 1513-3-02(D)(4) pertain to the notice of public meetings of the reclamation commission. These section changes replace references to public "hearings" to public "meetings" to reflect the same language that is included under Ohio's Sunshine Law. They clarify that a person may obtain advance notice of "regularly" scheduled public meetings, and provide the medium in which the time and location of such meetings are made available. Ohio explained that adjudicatory "hearings" are a subset of the term "meetings" (Administrative Record No. OH-2188-05). While these provisions have no Federal counterpart, we find that they are not inconsistent with the Federal regulations at 43 CFR part 4, and are therefore approved.

1513-3-02: Internal regulations. The change to 1513-3-02(H) regarding the availability of transcripts of commission proceedings is consistent with 43 CFR 4.23, Transcript of hearings, and is therefore approved.

1513-3-02: Internal regulations. The change to 1513-3-02(I) regarding the issuance of subpoenas is consistent with

43 CFR 4.26, Subpoena power and witness provisions generally, and is therefore approved.

1513-3-03: Appearance and practice before the commission. The changes to 1513-3-03(C) regarding representation when appearing before the commission are not inconsistent with 43 CFR 4.3, Representation before appeals boards, and are therefore approved.

1513-3-04: Appeals to the reclamation commission. The changes to 1513-3-04(B)(7) involve referencing pertinent regulations of the Revised Code and clarifying who may appeal. These changes are consistent with 43 CFR 4.1281, Who may appeal, and 43 CFR 4.1282, Appeals; how taken, and are therefore approved.

1513-3-05: Filing and service of papers. The change to 1513-3-05(H) involves the documentation required for a filing of an appeal. This change is not inconsistent with 43 CFR 4.1107, Filing of documents, and is therefore approved.

1513-3-08: Temporary Relief. The change to 1513-3-08(F) provides that the chairman who decided temporary relief will be involved in the final decision of the full commission with respect to an appeal of the temporary relief ruling. This change is not inconsistent with 43 CFR 4.1267, Appeals (of decisions on temporary relief) and 4.1367(f), Request for temporary relief, and is therefore approved.

1513-3-09: Responsive pleadings. The change to 1513-3-09(B) adds a time frame for responding to the commission. While this provision has no direct Federal counterpart, we find that it is not inconsistent with the Federal regulations at 43 CFR part 4, and is therefore approved.

1513-3-10: Discovery. The change to 1513-3-10(C) deletes the phrase "not privileged." Read by itself, this amendment could be construed to allow discovery of privileged information, without the permission of the person or agency in possession of the information. However, existing language also states that "[d]iscovery shall be conducted in accordance with the procedural provisions of the 'Ohio Rules of Civil Procedure.'" Rule 26 of Ohio's Rules of Civil Procedure provides "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Therefore, the change proposed here is non-substantive, does not render the State provision inconsistent with 43 CFR 4.1130 and 4.1132(a), and is approved.

1513-3-11: Motions. The changes to 1513-3-11(A)(4); 1513-3-11(C) and (E)

amend the deadlines for filing responses to written motions, for filing motions for reconsideration, and for filing motions for continuance before the reclamation commission. Other changes in this section involve paragraph renumbering. While these amended time limitations have no direct Federal counterparts, we find that they are not inconsistent with 43 CFR 4.22(d) and 43 CFR 4.1112, and they are therefore approved.

1513-3-12: Pre-hearing procedures. The changes to 1513-3-12(A) through (C) provide that a hearings officer may schedule and hold pre-hearing conferences, issue orders involving such conferences, and require filing of pre-hearing statements. Under the current program, only the full reclamation commission may take these actions. While these changes have no Federal counterparts, we find that they are not inconsistent with 43 CFR 4.1121(b), and are therefore approved.

1513-3-13: Notice of hearings and continuance of hearings. Changes to 1513-3-13(C) require that motions be filed at least fourteen days prior to the hearing. Motions for continuance made after this deadline will be granted only upon a demonstration of a need based upon an extraordinary situation. Under the current regulation, such a motion could be filed as late as five days prior to the hearing and granted without a demonstration that an extraordinary situation exists. While this provision has no Federal counterpart, we find that it is not inconsistent with the Federal regulations at 43 CFR part 4, and is therefore approved.

1513-3-14: Site views and location of hearings. The changes to 1513-3-14(A) involving site inspections require that safety requirements be met; clarify that a quorum of commission members need not attend a site view; and add that the commission may limit the number of individuals that may accompany a party to a site view. While these provisions have no Federal counterpart, we find that they are not inconsistent with the Federal regulations at 43 CFR part 4, and are therefore approved.

1513-3-16: Conduct of evidentiary hearings. The change to 1513-16(I) allows the commission to order the parties to file proposed findings of fact and conclusions of law at the conclusion of a hearing. We find that this change is consistent with 43 CFR 4.1126, Proposed findings of fact and conclusions of law, and is therefore approved.

1513-3-18: Reports and recommendations of the hearing officer. The change to 1513-3-18(F) increases the time in which a party may file a response to objections to a hearing

officer's report and recommendations from seven to fourteen days. While this provision has no Federal counterpart, we find that it is not inconsistent with the Federal regulations at 43 CFR part 4, and is therefore approved.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. OH-2188-04) 74 FR 17802. We did not receive any public comments or a request to hold a public meeting.

##### *Federal Agency Comments*

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Ohio program (Administrative Record No. OH-2188-02). The Mine Safety and Health Administration (MSHA), District 1, responded (Administrative Record No. OH-2188-03) that it did not find any changes or issues that would impact upon coal miners' health and safety.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under Federal regulations at 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

#### V. OSM's Decision

Based on the above findings, we approve the amendment Ohio sent to us on January 22, 2009, pertaining to Ohio's Administrative code.

#### VI. 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 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 because each 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, and 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 Government*

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*

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon 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. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the 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 government 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 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 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 935**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 2010.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 935 is amended as set forth below:

**PART 935—OHIO**

■ 1. The authority citation for part 935 continues to read as follows:

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

■ 2. Section 935.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 935.15 Approval of Ohio regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
January 22, 2009.	November 29, 2010.	OAC 1513-3-01; 3-02(B); 3-02(D)(4); 3-02(H)-(I)(1); 3-03(C); 3-04(B)(7); 3-04(H); 3-08(F); 3-09(B)-(C); 3-10(C); 3-11(A)(4); 3-11(C); 3-11(E)-(G); 3-12(A)-(C); 3-13(C)(2)-(3); 3-14(A)(2)-(4); 3-16(E)(2); 3-16(F)(2); 3-16(G); 3-16(I); 3-18(F); 3-19(A); 3-19(F); 3-19(I).

[FR Doc. 2010-29916 Filed 11-26-10; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0979]

RIN 1625-AA00

#### **Safety Zone; 1000-yard radius from position 29°48.77' N 091°33.02' W, Charenton Drainage and Navigation Canal, St. Mary Parish, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone extending to a 1000-yard radius from position 29°48.77' N 091°33.02' W, Charenton Drainage and Navigation Canal, St. Mary Parish, LA. This Safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury due to a sunken vessel and associated hazards. **DATES:** This rule is effective in the CFR on November 29, 2010 through December 31, 2010. This rule is effective with actual notice for purposes of enforcement on October 20, 2010. This rule will remain in effect until December 31, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0979 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0979 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary

rule, call or e-mail Lieutenant (LT) Russel Pickering, Coast Guard; telephone 985-380-5320, e-mail [russel.t.pickering@uscg.mil](mailto:russel.t.pickering@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable, as immediate action is needed to protect the general public, vessel and tows from a sunken vessel and associated hazards in position 29°48.77' N 091°33.02' W, in the Charenton Drainage and Navigation Canal.

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**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect the general public, vessel and tows from destruction, loss or injury due to sunken vessel and associated hazards in position 29°48.77' N 091°33.02' W.

##### Background and Purpose

A Mobile Inshore Drilling Rig (Hercules Rig 61) scheduled for scrap sank in the Charenton Navigation and Drainage Canal. The Charenton Navigation and Drainage Canal will be closed to all marine traffic within a

1000-yard radius of position 29°48.77' N 091°33', from 20 OCT, 2010 through 31 DEC, 2010. This Safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury from a sunken vessel and associated hazards.

##### Discussion of Rule

The Coast Guard is establishing a temporary Safety Zone in a 1000-yard radius of position 29°48.77' N 091°33.02' W within the Charenton Drainage and Navigation Canal. The temporary Safety Zone will continue from October 20, 2010 through December 31, 2010. Vessels and tows may not enter this zone unless authorized by the Captain of the Port Morgan City.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners and Local Notice to Mariners. The impacts on routine navigation are expected to be minimal.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently