

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

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 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1996

Ronald C. Recker,

*Acting Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 914—INDIANA**

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

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

2. Section 914.15 is amended by adding paragraph (rrr) to read as follows:

**§ 914.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(rrr) With the exceptions noted below, the amendments submitted by Indiana on September 26, 1994, and revised on August 16, 1995, are approved effective October 29, 1996:

The Director is approving 310 IAC 12-5-21/87(a)(3) except to the extent that the provisions authorize land surveyors to inspect and certify the construction of siltation structures.

The Director is approving 310 IAC 12-5-24/90(a)(9)(B) except to the extent that the provisions authorize land surveyors to inspect and certify impoundments.

The Director is approving 310 IAC 12-5-69, 5/137.5(2) except to the extent that the provisions allow the use of a maximum slope of 3h:1v without providing engineering design standards that ensure compliance with the minimum static safety factor of 1.3.

3. Section 914.16 is amended by removing and reserving paragraphs (o), (q), (r), (t), (u), (v), (w), (x), (y), (z), and (aa); and adding paragraph (ii) to read as follows:

**§ 914.16 Required program amendments.**

\* \* \* \* \*

(ii) By April 28, 1997, Indiana shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to address the following:

a. Amend the Indiana program at 310 IAC 12-3-49/83(e)(3) to add the requirement concerning stability analysis of each structure as is required by 30 CFR 780.25(f) and 784.16(f).

b. Amend 310 IAC 12-3-127(c)(4), introductory paragraph, to include the phrase "or by any person who owns or controls the applicant" after the word "applicant" in line 3, and the phrase "or person who owns or controls the applicant" after the word "applicant" in line 7.

c. The Director is requiring that Indiana further amend 310 IAC 12-5-24/90(a)(9)(E) to clarify that the term "subsection" should be "clause."

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BILLING CODE 4310-05-M

**30 CFR Part 935**

[OH-237; Amendment Number 71]

**Ohio Regulatory Program**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to rules pertaining to inspections. The amendment is intended to make the Ohio program consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** October 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2153.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Ohio Program  
II. Submission of the Proposed Amendment  
III. Director's Findings  
IV. Summary and Disposition of Comments  
V. Director's Decision  
VI. Procedural Determinations

## I. Background on the Ohio Program

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

## II. Submission of the Proposed Amendment

By letter dated May 17, 1996, (Administrative Record No. OH-2165-00) Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Ohio proposed to revise Ohio Administrative Code (OAC) section 1501:13-14-01 by deleting that portion of the rule pertaining to bond reduction; adding language to treat portions of operations as inactive where reclamation phase II is performed; and to delete a reference to permits other than permanent program "D" permits. In a subsequent letter dated September 3, 1996,

(Administrative Record No. OH-2165-06) Ohio withdrew its proposal to add language at OAC 1501:13-14-01(A)(2), that would allow portions of operations to be considered as inactive for inspection purposes.

OSM announced receipt of the proposed amendment in the June 11, 1996, Federal Register (61 FR 29504), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 11, 1996.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

#### *OAC 1501:13-14-01 Inspections*

(A)(2)(b) Ohio is proposing to amend its regulations pertaining to inspections to change the definition of "inactive coal mining and reclamation operation". Currently, one of the ways for an Ohio coal mining operation to be deemed "inactive" is for the entire operation to have achieved Phase II reclamation standards *and* that release of phase II bond liability has occurred. Ohio is proposing to delete the requirement that actual release from phase II bond liability must occur before a site is considered inactive so that the operation must only meet phase II reclamation standards to be considered inactive. The amendment has nearly identical wording to 30 CFR 842.11(c)(2)(iii)(B) (the rule applying to OSM when it is the regulatory authority). Although 30 CFR 842.11(c)(2)(iii)(B) is nearly identical to the Ohio amendment, 30 CFR 840.11(f)(2) (the rule applying to states when they are the regulatory authority), contains language nearly identical to Ohio's existing regulation. However, as discussed below, it is clear from the 1982 federal rule preamble, the OSM intended the rules for OSM and the states to be the same and only to require that Phase II reclamation be accomplished.

This 1982 federal final rule, was originally proposed by OSM on December 1, 1981 (46 FR 58464). OSM suggested a change to 30 CFR 842.11(c)(2), but did not propose a change to 30 CFR 840.11. Then, in the 1982 final rule regarding 30 CFR 840.11, four commenters "wrote that the same policy considerations of efficiency in Federal programs [should] apply to State programs." 47 FR 35620, 35621

(August 16, 1982). OSM agreed with the commenters and stated that:

The final rule allows States to distinguish between active and inactive mines in the same manner as was proposed and is being adopted for OSM when acting as the regulatory authority. This is accomplished through \* \* \* new paragraph (f), discussed above. A discussion of the comments addressing the question of active and inactive mines is found below, under the discussion of § 842.11(c).

*Id.* OSM, in its discussion of 30 CFR 842.11 responded to commenters that wanted the requirement for Phase II bond release deleted because it could cause "OSM to continue monthly inspections long after Phase II reclamation is completed." 47 FR at 35627 (August 16, 1982).

OSM agrees. In view of the broad discretion granted to OSM in releasing a portion of the performance bond following completion of Reclamation Phases I and II, the determination of a mine's status as active or inactive *should be based solely on the completion of Reclamation Phase II.* *Id.* (Emphasis added).

The Director finds Ohio's proposed deletion consistent with the intent of 30 CFR 840.11(f)(2) and therefore, no less effective.

(A)(2)(c) Ohio is proposing to delete this section pertaining to other than permanent program "D" permits. Since Ohio no longer has any active permits except permanent program permits, and permits pertaining to exploration are not subject to the specific inspection frequencies, the Director finds that Ohio's proposed rule is consistent with 30 CFR 701.1, which requires a *permanent* regulatory program to include subchapter L, which includes Part 840.

### IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Comments were received from one Environmental Group in a letter dated July 11. OSM carefully considered the comments. Essentially, the commenter opposed the amendment on the basis that it would legitimize an already deficient inspection frequency in Ohio, and cause additional safety and environmental hazards for the public. OSM recognizes the comment, however the commenter's concern about inspection frequency is really directed toward Ohio's implementation of its approved program, which is not the subject of this amendment. The Director notes that recently, OSM received a request, pursuant to 30 CFR 733.12(a)(2) ("733 request"), to evaluate

some of the same issues that are raised by the commenter. In response to the 733 request, OSM is in the process of reviewing the matter.

The subject of this amendment primarily deals with whether Ohio's revised definition of "inactive coal mining and reclamation operation" is no less effective than the applicable federal definition. Ohio's revised definition of "inactive coal mining operations" requires that Phase II reclamation be completed. For a more complete discussion of this amendment, see the Director's Findings. The commenter also was concerned that the amendment "would weaken Ohio's ability to adequately monitor surface mining." The Director disagrees because, even though more mines may be defined as inactive, "OSM has found that, in general, inactive mines present fewer problems than active mines, and consequently do not require the same frequency of inspections as active mines." 47 FR 35620, 35627 (August 16, 1982). Thus, the amendment would allow the inspection staff to devote more resources to active sites that pose a higher risk for impacts to the environment.

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

### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. No comments were received.

### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

### V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Ohio on May 17, 1996.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to

expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### *Executive Order 12866*

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

##### *Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

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

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations

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

##### List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 27, 1996.  
Ronald C. Recker,

*Acting Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

#### **PART 935—OHIO**

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

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

2. Section 935.15 is amended by adding paragraph (cccc) to read as follows:

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

\* \* \* \* \*

(cccc) The following rules, as submitted to OSM on May 17, 1996, are approved effective October 29, 1996:  
OAC 1501:13-14-01(A)(2)(b) (Deleted Portion) Definition of Inactive coal mining and reclamation operation  
OAC 1501:13-14-01(A)(2)(c) (Deletion) Same

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#### **POSTAL SERVICE**

##### **39 CFR Part 273**

##### **Liabilities for False Claims and Statements**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule amends sections of the Postal Service regulations under the Program Fraud Civil Remedies Act regarding liabilities of false claims and statements to allow cost-of-living or inflation adjustments to civil monetary

penalties administered by the Postal Service.

**EFFECTIVE DATE:** October 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth P. Martin, (202) 268-3022.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 31001(s), 110 Stat. 1321 (1996), requires agencies that assess civil monetary penalties to adjust their civil monetary penalties for inflation. The Postal Service may seek a civil penalty procedure under 31 U.S.C. 3802 for violations involving false claims and statements. The Postal Service is governed by 28 U.S.C. 2641 note, and accordingly, amends its civil penalties to reflect changes in §§ 273.3(a)(1) and 273.3(b)(1). Both sections are revised to increase the assessment of civil penalties from \$5,000 to \$5,500.

##### List of Subjects in 39 CFR Part 273

Administrative practice and procedure, Claims, Fraud, Penalties, Postal Service.

For the reasons set out in this document, the Postal Service amends 39 CFR part 273 as follows:

#### **PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT**

1. The authority citation for 39 CFR part 273 continues to read as follows:

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

2. Section 273.3 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

##### **§ 273.3 Liability for false claims and statements.**

\* \* \* \* \*

(a) *Claims.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent; or

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or