

the Commission can modify or supplement accounting standards and interpretations issued by the FASB. Moreover, the functioning of the ISB does not affect the authority of state licensing or disciplinary authorities regarding auditor independence.

The Commission expects that the public interest will be served by having the ISB take the lead in establishing, maintaining, and improving auditor independence requirements; and that operation of the ISB will promote efficiency, competition, and capital formation. The ISB, which is composed equally of public members (from which the ISB chairman must be elected) and practicing accountants, has undertaken to develop an institutional framework that will permit prompt and responsible actions by the ISB and its staff flowing from research and objective consideration of the issues. Collectively, the ISB members bring substantial experience and expertise to the process. In addition, the accounting profession's commitment of financial resources to the ISB is evidence of the private sector's willingness and intention to support the ISB. Under these circumstances, the Commission expects that determinations of the ISB will preserve and enhance the independence of public accountants, and thereby promote the interests of investors.

The central mission of the ISB will be to establish independence standards applicable to auditors of public entities that serve the public interest by promoting investor confidence in the securities markets. To further that goal, ISB standard-setting meetings will be open to the public, and proposed standards will be exposed for public comment before they are issued, in a process similar to that used by the FASB. In addition, the Commission will provide timely oversight of the ISB consistent with the Commission's statutory mandate to protect investors and safeguard the integrity of the capital markets.<sup>10</sup>

As noted, in the exercise of its statutory authority the Commission has the responsibility to ensure that independent audits of registrants' financial statements protect the interests of investors. In reviewing questions related to the fact or appearance of an

auditor's independence from an audit client, the Commission will consider an auditor to be not independent unless the auditor has substantial authoritative support for the position that the questioned transaction, event, or other circumstance, does not impair the auditor's independence. In this regard, the Commission will consider principles, standards, interpretations, and practices established or issued by the ISB as having substantial authoritative support for the resolution of auditor independence issues.<sup>11</sup> Conversely, the Commission will consider principles, standards, interpretations, and practices contrary to such ISB promulgations as having no such support.<sup>12</sup>

### III. Review of ISB Operations

Since the formation of the ISB, there have been public announcements of mergers of several of the "Big 6" accounting firms. The impact of these mergers, and the accelerating trend toward consolidation of auditing firms generally, on foreign and domestic self-regulatory programs is being discussed within the United States, other countries, and international organizations. These events will be monitored closely and may prompt the Commission to reconsider certain of the accounting profession's self-regulatory programs, including the ISB.

In view of the significance of auditor independence to investor confidence in the securities markets, the Commission also will review the operations of the ISB as necessary or appropriate and, within five years from the date the ISB was established, will evaluate whether this new independence framework serves the public interest and protects investors.

### IV. Regulatory Requirements

This general policy statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, and prior publication under the provisions of the Administrative Procedure Act ("APA").<sup>13</sup> Similarly, the provisions of the Regulatory Flexibility Act,<sup>14</sup> which apply only when notice and comment

are required by the APA or another statute, are not applicable.

### V. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

Add a new Section 601.04, captioned "Statement of Policy on the Establishment and Improvement of Standards Related to Auditor Independence" to include the text in topics I., II., and III. of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

### VI. Conclusion

The Commission believes that the foregoing statement of policy provides a sound basis for the Commission and the ISB to make significant contributions to meeting the needs of investors and the capital markets.

Dated: February 18, 1998.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-242-FOR, #75]

#### 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 its statutes pertaining to attorney fees. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** February 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2153.

<sup>10</sup> The Commission and its staff will consult with the ISB during the course of ISB consideration of standards or interpretations, including those dealing with matters addressed by existing SEC guidance. As the ISB reconsiders and effectuates changes in independence standards and practices that involve existing SEC guidance, the Commission will consider modifying or withdrawing its conflicting guidance unless the Commission determines that it should not accept the ISB position in a particular area.

<sup>11</sup> Positions of the ISB staff and consensuses of a permanent task force that will assist the ISB, the Independence Issues Committee, will not be considered authoritative unless or until ratified by the ISB. Positions issued by the ISB staff to a particular party, however, may be relied upon by that party in accordance with the ISB Operating Policies.

<sup>12</sup> Entities that may issue such principles, standards, or interpretations include the AICPA's Professional Ethics Executive Committee.

<sup>13</sup> 5 U.S.C. 553.

<sup>14</sup> 5 U.S.C. 601-602.

**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 34668). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Submission of the Proposed Amendment**

By letter dated June 24, 1997, (Administrative Record No. OH-2173-00) Ohio submitted a proposed amendment to its program pursuant to SMCRA in response to a required amendment at 30 CFR 935.16(a)(1) and (2). Ohio proposes to revise the Ohio Revised Code (ORC) at section 1513.13 which pertains to attorney fees.

OSM announced receipt of the proposed amendment in the July 7, 1997, **Federal Register** (62 FR 36248), 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 August 6, 1997.

During its review of the proposed amendment, OSM identified concerns relating to the provisions of 1513.13(E)(1) and (2). OSM notified Ohio of the concerns by letter dated August 4, 1997 (Administrative Record No. OH-2173-05). Ohio responded by letter dated August 19, 1997 (Administrative Record No. OH-2173-07), and revised the language at 1513.13(E)(2) to clarify that the statute applies to judicial review of any order or decision issued in any administrative proceeding under Chapter 1513.

Ohio submitted a second letter date October 14, 1997 (Administrative Record No. OH-2173-08) and revised the language at 1513.13(E)(1) to clarify that the specified fee provisions apply to both enforcement and permitting decisions. It also revised section 1513.13(E)(2), in the manner described below, in the Director's Findings. Because the revisions merely clarified the original proposed language and did not constitute major changes to the Ohio program, OSM did not reopen the comment period.

OSM did reopen the comment period on December 2, 1997 (62 FR 63684) to summarize the provisions of the proposed revision to 1513.13(E)(2) which were inadvertently omitted from the first notice, and described in the Director's Findings below. The comment period closed on December 17, 1997.

**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.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

**ORC 1513.13—Appeal of Violation, Order, or Decision to Reclamation Commission**

At paragraph (E)(1), Ohio is requiring that whenever an enforcement order or permit is issued pursuant to Chapter 1513 and is appealed, certain costs and attorney fees may be awarded. At paragraph (E)(1)(a), Ohio is proposing that a party, other than the permittee or the Division of Mines and Reclamation, may file a petition for an award of costs and expenses. The party may be awarded those costs and expenses, including attorney's fees that were necessary and reasonably incurred by the petitioning party. At paragraph (E)(1)(b), Ohio is clarifying that a permittee may file, with the Chief, a request for an award to the permittee of the costs and expenses, including attorney's fees, reasonably incurred by the permittee in connection with an appeal initiated under this section. The Chief may assess those costs and expenses against a party who initiated, or participated in, the appeal if the permittee demonstrates that the party initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the permittee. At paragraph (E)(1)(c), Ohio is clarifying that attorney's fees are included in the costs and expenses specified. A party who participated in an appeal in bad faith may have costs and expenses assessed against him or her. At paragraph (E)(2), Ohio is providing that if a final order relating to Chapter 1513 is issued by the Reclamation Commission pursuant to section 1513.13(B) or by a Court of Common Pleas pursuant to section 1513.15(B) or by the Chief pursuant to section 1513.39 and becomes the subject of judicial review, certain costs and expenses, including attorney fees, reasonably

incurred by a party in connection with their participation in the judicial proceedings may be awarded.

The Director finds that the proposed revisions at 1513.13(E)(2) are substantively identical to section 525(e) of SMCRA, 30 U.S.C. section 1275(e), which provides for the award of a sum equal to the aggregate amount of all costs and expenses, including attorney fees, to have been reasonably incurred by a participant in such administrative or judicial proceedings. The Director finds that the revisions proposed at 1513.13(E)(1), (E)(1)(a), (E)(1)(b), and (E)(1)(c) are substantively identical to section 525(e) of SMCRA, 43 CFR 4.1294(b), 43 CFR 4.1294(d), and 43 CFR 4.1294(e), respectively. The proposed revisions also satisfy the conditions of the required amendments at 30 CFR 935.16(a)(1) and (2). Ohio's provisions clarify that fee provisions apply to both enforcement and permitting decisions and that costs may be assessed against any participant in bad faith appeals. Therefore, the Director is removing the required amendments.

**IV. Summary and Disposition of Comments****Public Comments**

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One public comment was received in support of the proposed revisions. Four other commentors expressed concern that the proposed amendment appears to adversely affect or eliminate altogether the ability of citizens to recover the costs and fees they incur in appealing a decision which involves industrial minerals mining permits. The Director notes that to the extent that these comments pertain to non-coal mineral regulation, they are not germane to this rulemaking, which only concerns the effect which the proposed revisions have on the award of attorney fees as a result of administrative and judicial appeals of decisions related to coal mining. OSM's approval of these revisions is neither an explicit nor an implicit approval of the curtailment of attorney fee awards in industrial mineral proceedings, since OSM has no jurisdiction over such proceedings. (The converse is also true. Were OSM to disapprove these revisions, that disapproval would only affect coal mining proceedings. The applicability of the revisions to industrial minerals proceedings would not be affected.)

Two commenters also argued that the proposed change to ORC 1513.13(E)(1)

is inconsistent with the underlying objective of 30 CFR 732.15(b)(10), which is to require state mining laws to have provisions "for public participation in the development, revision and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this chapter." As noted in the finding above, the Director has determined that Ohio's proposed revisions are consistent with counterpart provisions in SMCRA and the Federal regulations. 30 CFR 732.15(b)(10) requires that states provide for public participation in all aspects of the regulation of surface coal mining operations only. The commenters fail to articulate how these revisions curtail public participation with respect to the regulation of surface coal mining operations.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The Department of Labor, Mine Safety and Health Administration, and the Department of the Army, Army Corps of Engineers, both concurred without comment.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment. EPA did not respond to OSM's request.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on June 24, 1997, and revised on August 19, 1997, and October 14, 1997. The Director is also removing the required amendments at 30 CFR 935.16(a) (1) and (2) because they have been satisfied by revisions contained in this submission.

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

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

**VI. Procedural Determinations**

*Executive Order 12866*

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

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

*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: February 9, 1998.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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

**PART 935—OHIO**

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

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

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

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 24, 1997.	[Insert date of publication in the Federal Register].	ORC 1513.13(E).

**§ 935.16 [Amended]**

3. Section 935.16 is amended by removing the text, and reserving the section and section heading.