

Dated: November 13, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

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

2. Section 901.15 is amended in the table by adding a new entry in

chronological order by "Date of final publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
August 4, 1998	December 4, 1998	880-X-2A-.06; .08; 880-X-6A-.06(d)3.; 880-X-8F-.08(1)(e), (l) and (o); .09(2)(d); .11(1), (1)(b) and (c), (2), (3)(c), (6); .20; 880-X-8H-.06(1)(e)3.(iv); 880-X-8I-.07(1)(e),(l) and (o); .10(1), (2), (2) (b), (g) and (h); .12(1), (1) (b) and (c), (2), (3)(c), (6); .20; 880-X-8J-.13; 880-X-8K-.10(2)(d), (3)(m); 880-X-8N-.07(c); .10; .13(1), (1) (c), (e) and (f), (2);880X-9D-.02(1)(c);880-X-10C-.17(1) (a) and (c), (3)(b); .20(1)(a), (d), (e), (f)1., (i)2.(i) and (iii), (l), (3)(b)1. and 2.; .38(1); .54; .55; .62(3); 880-X-10D-.12(9); .17(1) (a) and (c), (3)(b); .20(1) (a), (d), (e), (f)1., (i)2. (i) and (iii), (l), (3)(b)1.and .2; .34(1); .56(3); .58; 880-X-10G-.03(2); .04(3)(b); 880-X-11B-.02 (8)(d), (9); 880-X-11D-.11(1).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-243-FOR, #76]

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 (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to its rules pertaining to permitting requirements, bond release, and performance standards to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Manager, Pittsburgh Oversight and Inspection Office, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2153. Internet: grieger@osmre.gov.

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. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34668). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated December 30, 1997 (Administrative Record No. OH-2174-05), Ohio submitted a proposed amendment to its program in accordance with SMCRA and 30 CFR 732.17(c). Ohio proposes to revise the Ohio Administrative Code (OAC) at sections:

- 1501.13-4-05—Permit Application Requirements
- 1501.13-4-12—Special Categories of Mining
- 1501.13-4-14—Underground Permit Application Requirements
- 1501.13-7-05—Release of Performance Bond
- 1601.13-9-04—Performance Standards

We announced receipt of the proposed amendment in the January 23, 1998, **Federal Register** (63 FR 3507), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 23, 1998.

During our review of the amendment, we identified concerns with Ohio's rules at OAC 1501 at subsections 13-4-12, 13-4-05, 13-4-14, and 13-9-04. We notified Ohio of our concerns via electronic mail on May 5, 1998 (Administrative Record No. OH-2174-

11). By letter dated June 2, 1998 (Administrative Record No. OH-2174-12), Ohio submitted revisions at OAC 1501 at subsections:

- 13-4-05 (H)(1)(c), (H)(2)(c), (H)(6)
- 13-4-14 (H)(1)(c), (H)(2)(c), (H)(6)
- 13-9-04 (H)(1)(c)(ii), (H)(1)(d)

to reference the criteria in Natural Resources Conservation Service's Technical Release No. 60 (TR 60), "Earth Dams and Reservoirs," relating to the provisions of 1513.13(E) (1) and (2).

During a conference call on July 16, 1998 (Administrative Record No. OH-2174-13), we informed Ohio that one issue remained at OAC 1501:13-4-12. On September 4, 1998, Ohio telefaxed us revisions to subsection 13-4-12(F) (Administrative Record No. OH-2174-16).

Based on these revisions, we reopened the public comment period in the October 6, 1998, **Federal Register** (63 FR 53618). The comment period closed on October 21, 1998.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table below contain language that is the same or similar to the

corresponding sections of the Federal regulations. Any differences between the proposed State regulations and the Federal regulations are nonsubstantive.

Topic	State regulation (OAC)	Federal counterpart (30 CFR)
Permit Application Requirements	1501:13-4-05(H)(1)(a)	780.25(a)
Permit Application Requirements	1501:13-4-05(H)(1)(b)	780.25(a)(2)
Permit Application Requirements	1501:13-4-05(H)(1)(c)	780.25(a)(3)
Permit Application Requirements	1501:13-4-05(H)(2)(c)	780.25(c)(3)
Permit Application Requirements	1501:13-4-05(H)(3)(a)	780.25(c)
Permit Application Requirements	1501:13-4-05(H)(3)(c)	780.25(c)(2)
Permit Application Requirements	1501:13-4-05(H)(6)	780.25(f)
Permit Application Requirements	1501:13-4-12(E)	785.16(a)
Requirements for Special Categories Underground Mining	1501:13-4(H)(1)(a)	784.16(a)
Permit Application Underground Mining	150:13-4-14(H)(1)(b)	784.16(a)(2)
Permit Application Underground Mining	1501:13-4-14(H)(1)(c)	784.16(a)(3)
Permit Application Requirements Underground Mining	1501:13-4-14(H)(2)(c)	784.16(c)(3)
Permit Application Requirements Underground Mining	1501:13-4-14(H)(3)(a)	784.16(c)
Permit Application Requirements Underground Mining	1501:13-4-14(H)(3)(c)	784.16(c)(2)
Permit Application Requirements Underground Mining	1501:13-4-14(H)(6)	784.16(f)
Permit Application Requirements Bond Release	1501:13-7-05(A)(2)(a)(iv)	800.40(a)(3)
Protection of Hydrologic System	1501:13-9-04(H)(1)(a)	816/817.49(a)(1)
Protection of Hydrologic System	1501:13-9-04(H)(1)(c)(i)	816/817.49(a)(4)(i)
Protection of Hydrologic System	1501:13-9-04(H)(1)(c)(ii)	816/817.49(a)(4)(ii)
Protection of Hydrologic System	1501:13-9-04(H)(1)(d)	816/817.49(a)(5)
Protection of Hydrologic System	1501:13-9-04(H)(1)(e)(i)	816/817.49(a)(6)(i)
Protection of Hydrologic System	1501:13-9-04(H)(1)(h)(iii)	816/817.49(a)(ii)(A)
Protection of Hydrologic System	1501:13-9-04(H)(1)(k)	816/817.49(a)(12)

B. Regulations That Ohio Removed From the Ohio Administrative Code (OAC)

Ohio proposed to remove OAC 1501:13-9-04(G)(3)(b)—Sedimentation Ponds. We are approving the deletion because Ohio addresses these requirements at OAC 1501:13-9-04(H)(1)(h). We find that this change does not make the Ohio program less effective than the Federal regulations.

C. Revisions to Ohio's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

Ohio proposed to add section OAC 1501:13-4-12(F)(4)(e) to prohibit a decrease in the aggregate total prime farmland acreage from that which existed prior to mining. Any constructed permanent water bodies must be located within the post-reclamation non-prime farmland portions of the permit area. If the prime farmland acreage is to be restored in a location other than the premining location, Ohio must approve the relocation. The permittee must obtain the consent of all affected landowners. We approve the provisions of this section because they are no less effective than 30 CFR 785.17(e)(5).

Ohio proposed to revise OAC 1501:13-7-05(A)(2)(c)(ii) to require that the request for the approval of reclamation phase III includes yield data for those acres reclaimed as pasture or grazing land, if appropriate. While the Federal regulations at 30 CFR 800.40 do not include this specific

requirement, we are approving the revision as it is not inconsistent with the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. Two public comments were received. One commenter requested a copy of the specific language being proposed at OAC 1501:13-4-12(E). He also suggested that OAC 1501:13-9-4(H) include a notification of MSHA provision. We note that the Federal regulations at 30 816/817.49(a)(9) do not have this requirement. The second commenter questioned the 15-day comment period. She thought 30 days was required. We note that the shorter comment period appeared in the second **Federal Register** notice which re-opened the comment period. 30 CFR 732.17(h)(3) provides for a 15-day comment period under certain circumstances. The commenter also submitted a list of questions which generally addressed the effects of the proposed amendment on the landowner, industry, and the community at large. We note that amendments are reviewed based on consistency with the Federal regulations and accordance with the provisions of SMCRA. As discussed in Section V above, Ohio's proposed

amendment is approved because it meets those standards.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we 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, we approve the proposed amendment as submitted by Ohio on December 30, 1997 and revised on June 2, 1998 and

September 4, 1998. We approve the rules that Ohio proposed with the provision that they be fully placed in force in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 935 which codifies decisions concerning the Ohio program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Ohio to bring its program 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

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 526DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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 Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1998.

Allen D. Klein,

Assistant 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
* * * * *	* * * * *	* * * * *
December 30, 1997	December 4, 1998	OAC 1501:13-4-05, 1501:13-4-12, 1501:13-4-14, 1501: 13-7-05, 1501:13-9-04.

[FR Doc. 98-32349 Filed 12-3-98; 8:45 am]
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DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT-039-FOR]

Utah Regulatory Program

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (63 FR 63608) on November 16, 1998. The final rule removed a required amendment imposed by the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) resulting from OSM's review of a previous amendment to the Utah Code. The November 16, 1998, final rule removed the last required amendment placed on Utah at 30 CFR 944.16, but inadvertently omitted removing the introductory text

of § 944.16. This correction rectifies that error by removing and reserving all of § 944.16.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, (202) 208-2783.

Correction of Publication

In final rule FR Doc. 98-30547, on page 63 FR 63611 in the **Federal Register** issue of November 16, 1998, make the following correction:

In the first column, § 944.16 should read, "Section 944.16 is removed and reserved."