

Issued in Washington, DC on January 28, 1999.

**Kenneth R. Wykle,**  
Federal Highway Administration  
Administrator.

**Jolene M. Molitoris,**  
Federal Railroad Administration  
Administrator.

**Gordon J. Linton,**  
Federal Transit Administration  
Administrator.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH-244-FOR]

#### Ohio Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1513-3-21 of the Ohio Administrative Code (OAC) as it relates to awards of costs and expenses, including attorney's fees, arising in connection with appeals heard by the Reclamation Commission. The amendment is intended to revise the Ohio program to be consistent with its statute at Ohio Revised Code (ORC) § 1513.13(E) as well as the corresponding Federal regulations.

**DATES:** If you submit written comments, they must be received by 4:00 p.m., [E.D.T.] March 10, 1999. If requested, a public hearing on the proposed amendment will be held on March 5, 1999. Requests to speak at the hearing must be received by 4:00 p.m., on February 23, 1999.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Field Branch Chief, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday,

excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

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.  
Ohio Division of Mines and  
Reclamation, 1855 Fountain Square  
Court, Columbus, Ohio 43244,  
Telephone: (614) 265-1076.

**FOR FURTHER INFORMATION CONTACT:**  
George Rieger, Field Branch Chief,  
Appalachian Regional Coordinating  
Center, Telephone: (412) 937-2153.  
Internet: grieger@osmre.gov.

#### SUPPLEMENTARY INFORMATION:

##### 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 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

##### II. Description of the Proposed Amendment

By letter dated January 21, 1999 (Administrative Record No. OH-2177-00) Ohio submitted proposed amendments to its program concerning award of costs and fees in connection with appeals heard by the Reclamation Commission. Ohio submitted the proposed amendments at its own initiative. The changes proposed by Ohio in the amendment are discussed briefly below:

OAC 1513-3-21 Award of costs and expenses.

(a) Paragraphs (A) and (B) are amended by changing the reference from the "board of review" to the "Reclamation Commission" and specifically requiring that a petition for costs and expenses including attorney's fees be submitted in accordance with Section 1513.13(E) and (E)(1)(c) of the ORC.

(b) New paragraph (C) is added to specify that a decision by the Chief of the Division of Mines and Reclamation granting or denying in whole or in part a request for an award of costs and expenses including attorney's fees made under Section 1513.13(E)(1)(a) or 1513.13(E)(1)(b) of the ORC shall be appealable to the commission under Section 1513.13(A) of the ORC.

(c) Existing Paragraph (C) pertaining to the contents of a petition is re-numbered as (D) and further amended by including the specific references to the ORC included in (a) and (b) above.

(d) Existing Paragraphs (D), (E) and (F) are re-numbered as (E), (F), and (G) and are further amended by changing the references from the board to the Reclamation Commission.

#### III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we determine the amendment to be adequate, it will become part of the Ohio program.

##### Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. Comments received after the time indicated under "DATES" or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

##### Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on February 23, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### IV. 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 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

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: January 29, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD 05-98-043]

RIN 2115-AA97

#### Safety Zone; Atlantic Ocean, Vicinity of Cape Henlopen State Park, DE

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Delaware Aerospace Education Foundation plans to launch a Super Loki Meteorological Rocket from Cape Henlopen State Park on the second Saturday of May each year. The Coast Guard proposes to establish a Safety Zone in the Atlantic Ocean near Cape

Henlopen State Park, Delaware to protect spectators and vessels from the potential hazards associated with this launch.

**DATES:** Comments must be received on or before March 25, 1999.

**ADDRESSES:** Comments may be mailed to Commanding Officer, USCG MSO/ Group Office, 1 Washington Avenue, Philadelphia, Pennsylvania 19147-4395. Attention: Chief Petty Officer Ward, or hand-delivered to the same address between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (215) 271-4888. Comments will become part of this docket and will be available for inspection and copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) Fallacy or Chief Petty Officer Ward, Project Managers, Waterways and Waterfront Facilities Branch, at (215) 271-4888.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05-98-043) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The Delaware Aerospace Education Foundation plans to launch a Super Loki Meteorological Rocket from Cape Henlopen State Park each year on the second Saturday in May for the purpose of collecting meteorological data. If the Saturday launch is canceled due to inclement weather, it will be scheduled