

### *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, Federal, State, or local governmental agencies or geographic regions; 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 counterpart 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 counterpart 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 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 12, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 935**

[OH-247-FOR]

#### **Ohio Regulatory Program**

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

**ACTION:** Notice of withdrawal of proposed amendment.

**SUMMARY:** We, the Office of Surface Mining (OSM), are announcing the

withdrawal of proposed rule changes to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposed to revise its program by amending the definition of "inactive coal mining and reclamation operation" with respect to prime farmland.

**DATES:** This withdrawal is made on May 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Rieger, Telephone: (412) 937-2153, Internet address: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Ohio Program
- II. Submission of the Proposed Amendment

#### **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). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. 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 10, 1982 **Federal Register** (47 FR 34717). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.10, 935.15, and 935.16.

#### **II. Submission of the Proposed Amendment**

By letter dated September 13, 2001, Ohio sent us an amendment to its program (Administrative Record Number OH-2181-00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio sent the amendment to include the changes made at its own initiative.

The provision of the Ohio Administrative Code (O.A.C.) that Ohio proposed to revise is: O.A.C. 1501:13-14-01, Inspections. Specifically, Ohio proposed to revise the definition of "inactive coal mining and reclamation operation" with respect to prime farmland. Under the State's current rule, "inactive coal mining and reclamation operation" means an operation:

(a) For which the chief has secured from the permittee the written notice required under paragraph (A) of rule 1501:13-9-16 of the Administrative Code;

(b) Conducted under a D-permit, for which reclamation phase II as defined in (B)(1)(b)(I, II, AND IV) of rule 1501:13-7-05 of the Administrative Code has been completed.

The State proposed to add the following language to the end of part (b) of the current rule:

With respect to prime farmland, soil replacement has been carried out in accordance with the requirements of Rule 1501:13-13-03 of the Administrative Code and Division (A)(7) of Section 1513.16 of the Revised Code and sufficient ground cover has been established to prevent erosion or, where row crops are the approved reference crop, the initial planting has occurred.

The effect of the proposed change would have been to reduce the frequency of inspections required for reclaimed areas of prime farmland by classifying such areas as inactive before Phase II reclamation has been completed.

We announced receipt of the proposed amendment in the November 7, 2001 **Federal Register** (66 FR 56263). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Number OH-2181-03). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 7, 2001. We received one comment from the Natural Resources Conservation Service.

In a letter dated February 15, 2002, Ohio notified us that it was withdrawing the proposed amendment from consideration. Because the proposed amendment is not necessary to make the State's program consistent with SMCRA, OSM accepted the withdrawal.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 2002.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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