



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[SATS No. OH-261-FOR; Docket ID: OSM-2019-0007; S1D1S SS08011000

SX064A000 20S180110 S2D2S SS08011000 SX064A000 20XS501520]

Ohio Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement, are announcing receipt of a proposed amendment to the Ohio (hereinafter, the Ohio program) regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio's proposed amendment is prompted by requirements within the Ohio statute that all agencies must review their administrative rules every five years. Consistent with this requirement, the Ohio Reclamation Commission, (the Commission), proposes an amendment to its procedural rules in order to ensure an orderly, efficient, and effective appeals process.

This document gives the times and locations that the Ohio program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern

Standard Time (e.s.t.), [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. OH-258-FOR, by any of the following methods:

- Mail/Hand Delivery: Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220
- Fax: (412) 937-2177
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the

amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Ben Owens, Field Office Director

Pittsburgh Field Office

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center

Pittsburgh, Pa 15220

Telephone: (412) 937-2827

Email: bowens@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Dave Crow, Acting Chief

Ohio Department of Natural Resources

Division of Mineral Resources Management

2045 Morse Road, Building H2

Telephone: (614) 265-1020

Email: dave.crow@dnr.state.oh.us

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Field Office

Director, Pittsburgh Field Office, 3 Parkway Center, Pittsburgh, Pa. 15220. Telephone:

(412) 937-2827, Email: bowens@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

II. Description of the Proposed Amendment

III. Public Comment Procedures

IV. Procedural Determinations

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 approved, State program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *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 of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning the Ohio program and program amendments at 30 CFR 935.10, State Regulatory Program Approval; and 935.11, Conditions of State Regulatory Program Approval; and 935.15, Approval of Ohio Regulatory Program Amendments.

II. Description of the Proposed Amendment

By letter dated June 13, 2018 (Administrative Record No. OH-2197-01), Ohio sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) The Commission is an adjudicatory board established pursuant to Ohio Revised Code (ORC) section 1513.05. The function of the Commission is to provide an administrative appeal

to any person claiming to be aggrieved or adversely affected by a decision of the Ohio Department of Natural Resources, Chief of the Division of Mineral Resources Management (DMRM), relating to mining and reclamation issues. Following an adjudicatory hearing, the Commission affirms, vacates, or modifies the DMRM Chief's decision. The Commission is comprised of eight members appointed by the Governor of Ohio. Four Commission members constitute a quorum and seven members must be present for any appeal. Members represent a variety of interests relevant to mining and reclamation issues. The Commission adopts rules to govern its procedures. These rules are found at Ohio Administrative Code (OAC) sections 1513-3-01 through 1513-3-22. As discussed above, all Ohio agencies must review applicable administrative rules every five years pursuant to ORC section 119.032. Therefore, the Commission conducted a review of its procedural rules in 2018. During this review, the Commission recommended several modifications to its rules, most of which are viewed as non-substantive. The Commission intended these modifications to ensure an orderly, efficient, and effective appeal process. The proposed changes are the subject of this proposed amendment and are discussed herein in the order as they are found in the proposed, modified OAC.

1. Ohio Revised Code Section 1513-3-01: Definitions

Ohio proposes changes to clarify existing definitions and to provide additional definitions. Specifically, the following definitions are added: "Amicus curiae" means a "friend of the court." The participation of a non-party amicus curiae is addressed under paragraph (F) of rule 1513-3-07 of the Administrative Code; "Ex parte communication" means a communication between the commission and one party to an appeal, without the

inclusion of other parties to the appeal. Ex parte contacts and communications are addressed, and prohibited, under paragraph (G) of rule 1513-3-03 of the Administrative Code; "In camera" means in private rather than in open hearing. In camera procedures are addressed under paragraph (C) of rule 1513-3-16 of the Administrative Code.; "Pro hac vice" means "for one particular case," and addresses the ability of an out-of state attorney to appear in an appeal before the commission pursuant to paragraphs (A) and (C) of rule 1513-3-03 of the Administrative Code; "Subpoena ad testificandum" means a subpoena for the appearance and testimony of a witness; and is addressed under paragraph (I) of rule 1513-3-02 of the Administrative Code; "Subpoena duces tecum" means a subpoena requiring a witness to produce documents or other items at hearing and is addressed under paragraph (I) of rule 1513-3-02 of the Administrative Code. The definition of "discovery" is proposed to be modified to remove the word "made". The definition of "Regular business hours" added as defined in section 124.19 of the Revised Code. The remaining modifications are renumbering to facilitate the addition of new terms.

2. *Minor amendments are proposed to the following:*

Minor changes and non-substantive are proposed to the following sections: 1513-3-02 Internal Regulations; 1513-3-04 Appeals to the Reclamation Commission; 1513-3-05 Filing and Service of Papers; 1513-3-06 Computation and Extension of Time; 1513-3-11 Motions 1513-3-14; Site Views and Location of Hearings; 1513-3-16 Conduct of Evidentiary Hearings; and 1513-3-22 Appeals from Commission Decisions.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any

time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public

and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563— Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 18, 2019.

Thomas D. Shope,

Regional Director,

North Atlantic - Appalachian Region

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