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 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

Ohio Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Ohio regulatory program (the Ohio 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.

DATES: The effective date is October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Acting 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

Section 503(a) of the Act, State Programs, 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 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. Submission of the Amendment

By letter dated June 13, 2018 (Administrative Record OH–2197–01), Ohio sent us an amendment regarding its program under SMCRA (30 U.S.C. 1201 *et seq.*) to clarify existing definitions and to provide additional definitions related to work of the Commission. This submittal was prompted by requirements of Sections 106.03 and 119.04 of the Ohio Revised Code (ORC) that all state agencies must review their administrate rules every five years.

For background purposes, the Commission is an adjudicatory board established pursuant to ORC 1513.05. The Commission is the office to which administrative appeals may be filed by 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. Members represent a variety of interests relevant to mining and reclamation issues. The Commission adopts rules to govern its procedures. The Commission's rules are found in the Ohio Administrative Code (OAC) at OAC 1513–3–01 through 1513–3–22, and are the subject of the current amendment.

We announced receipt of the proposed amendment in the February 25, 2020 **Federal Register** (85 FR 10636) (Administrative Record No. OH–2197). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. No meeting or hearing was requested, and no public comments were received. The public comment period ended on March 11, 2020.

III. OSMRE's Findings

We made the following findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. In making these findings, we compared Ohio's provisions to 43 CFR part 4, which governs administrative proceedings and appeals relevant to OSMRE's actions under the Federal regulatory program. We are approving the amendments as described below. The full text of this program amendment is available at *www.regulations.gov.*

A. Ohio's revisions to OAC 1513–3–01 consist of additions and modifications to the definitions outlined herein. As a result, renumbering was also made to facilitate the addition of new terms.

1. ''Amicus curiae''. Ohio seeks to add this term as paragraph (B), describing it to mean a ''friend of the court.'' The amendment also explains the participation of a non-party amicus curiae is addressed under OAC 1513–3–07 (F).

2. ''Ex parte communication''. Ohio seeks to add this term as paragraph (J), describing it to mean ''a communication between the commission and one party to an appeal, without the inclusion of other parties to the appeal.'' The amendment also explains that ex parte contacts and communications are addressed and prohibited under OAC 1513–3–03 (G).

3. ''In camera''. Ohio seeks to add this term as paragraph (N), describing it to mean ''in private rather than in open hearing.'' The amendment also references OAC 1513–3–16 (C) for in camera procedures.

4. ''Pro hac vice''. Ohio seeks to add this term as paragraph (S), describing it to mean ''for one particular case''. In accordance with OAC 1513–3–03 (A) and (C), it explains the ability of an out-of-state attorney to appear in an appeal before the commission.

5. ''Subpoena ad testificandum''. Ohio seeks to add this term as paragraph (V), describing it to mean ''a subpoena for the appearance and testimony of a witness.'' The definition also references the use of this term at OAC 1513–3–02 (I).

6. ''Subpoena duces tecum''. Ohio seeks to add this term as paragraph (W), describing it to mean ''a subpoena requiring a witness to produce documents or other items at hearing''. The definition also references use of this term at OAC 1513–3–02 (I).

B. Ohio made typographical, editorial, and other minor revisions to the following sections: OAC 1513–3–01(I) (the definition of ''discovery'') and (T) (the definition of ''Regular business hours''); OAC 1513–3–02 *Internal Regulations;* OAC 1513–3–04 *Appeals to the Reclamation Commission;* OAC

1513–3–05 *Filing Service of Papers;* OAC 1513–3–06 *Computation and Extension of Time;* OAC 1513–3–11 *Motions;* OAC 1513–3–14 *Site Views an Location of Hearings;* OAC 1513–3–16 *Conduct of Evidentiary Hearings;* and OAC 1513–3–22 *Appeals from Commission Decisions.*

OSMRE Finding: While the definitions of ''amicus curiae,'' ''ex parte communication,'' ''in camera,'' ''pro hac vice,'' ''subpoena ad testificandum,'' and ''subpoena duces tecum'' are not defined terms in the equivalent Federal regulations at 43 CFR part 4, they are used at 43 CFR 4.3 and 4.27. Ohio's definition of ''amicus curiae'' and ''ex parte communication'' are not inconsistent with the use of those terms within 43 CFR part 4. The remaining terms do not appear in 43 CFR part 4 or other relevant regulations of the Department. However, Ohio's definition of ''in camera'' is not inconsistent with the process for protecting certain materials from disclosure described at 43 CFR 4.31. Likewise, Ohio's definition of ''pro hac vice'' is not inconsistent with the standards for who may practice before the Department at 43 CFR 1.3 and 4.3. Finally, Ohio's definitions for ''subpoena ad testificandum'' and ''subpoena duces tecum'' are not inconsistent with the Department's subpoena provisions at 43 CFR 4.26. Therefore, we approve the addition of these definitions.

Any revisions that we have not specifically discussed concerning non-substantive wording or editorial changes, including the addition of paragraph (A)(4) to OAC 1513–3–06 (providing a citation to a provision defining state holidays), can be found in the full text of the program amendment available at *www.regulations.gov.*

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment; however, none were received.

Federal Agency Comments

On October 1, 2018, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Ohio program (Administrative Record No. OH–2197). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 that Ohio proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on October 1, 2018, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. OH–2197). The EPA responded on November 2, 2018, that the proposed program amendment does not fall under the purview of the EPA's Clean Water Act (Administrative Record OH–2197–05).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP that may have an effect on historic properties. On October 1, 2018, we requested comments on Ohio's amendment (Administrative Record No. OH–2197). We did not receive comments from the SHPO or ACHP.

V. OSMRE's Decision

Based on the above findings, we are approving Ohio's program amendment submission sent to us on June 13, 2018 (Administrative Record No. OH–2197–01). To implement this decision, we are amending the Federal regulations at 30 CFR part 935, that codify decisions concerning the Ohio program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

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.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the program amendment that the State of Ohio drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. Ohio, through its approved regulatory program, implements and administers

SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Ohio program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Ohio program does not regulate Indian lands or surface coal mining activities on Indian lands. Indian lands, as that term is defined under 30 U.S.C. 1291(9) are regulated independently under the Federal Indian lands program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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. 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.

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 government 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal Governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 935 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 amendment.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
June 13, 2018	September 20, 2023	OAC 1513–3–01 Definitions. Addition of definitions of ''Amicus curiae'', ''Ex parte communication'', ''In camera'', ''Pro hac vice'', ''Subpoena ad testificandum'', ''Subpoena duces tecum''. OAC 1513–3–06(A)(4) Computation and Extension of Time.

[FR Doc. 2023–20348 Filed 9–19–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–071–FOR; Docket No. OSM–2019–0011; S1D1S SS08011000 SX064A000 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

Texas Abandoned Mine Land Reclamation Plan and Regulations

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Texas abandoned mine land reclamation plan (Texas Plan) and regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed to revise its existing Plan and regulations in response to OSMRE's request to amend the Texas Plan and to improve the readability and efficiency of the document.

DATES: October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Joe Maki, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629. Telephone (918) 581–6430, Email: *jmaki@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program and Plan

The Abandoned Mine Land Reclamation (AML) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded primarily by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit for approval to the Secretary of the Interior a program (often referred to as a plan) for the reclamation of coal mines abandoned or otherwise left in an inadequate reclamation status at the time SMCRA was enacted.

On June 23, 1980, the Secretary of the Interior approved the Texas Plan. You can find general background information on the Texas Plan, including the Secretary's findings and the disposition of comments, in the June 23, 1980, **Federal Register** (45 FR 41937). You can also find later actions concerning Texas's AML Program and Plan amendments at 30 CFR 943.25.

II. Submission of the Amendment

Under the authority of 30 CFR 884.15, OSMRE by letter dated March 8, 2019 (Administrative Record No. TX–0707), directed Texas to update the Texas Plan. In that letter, known as a Part 884 letter, OSMRE indicated that the Texas Plan required revisions to meet the requirements of SMCRA as revised on December 20, 2006, by the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), and in response to changes made to the implementing Federal regulations as revised on November 14, 2008 (73 FR 67576), and February 5, 2015 (80 FR 6435). The letter required Texas to provide either ''(1) a proposed written Reclamation Plan amendment or, (2) a description of the Reclamation Plan amendments you will propose in response to the revised regulations or, (3) a detailed statement explaining why [Texas] believe[d] no amendment to [Texas's] Reclamation Plan is necessary.'' The letter further provided Texas with a summary of the changes to the Federal Program that might require amendments to the Texas Plan to ensure Texas's program was consistent with and no less effective than the Federal Program.

By letter dated December 3, 2019 (Administrative Record No. TX–708), Texas sent us amendments to the Texas Plan and conforming State regulations. The Texas amendments are intended to address all required amendments identified in OSMRE's letter dated March 8, 2019. Texas's amendments will revise the State's existing AML Plan and AML program regulations.

We announced receipt of the proposed amendments in the July 20, 2020, **Federal Register** (85 FR 43759). In the same document, we opened a public comment period and provided an opportunity for a public hearing or meeting on the amendment. We received three comments. We did not hold a public hearing or meeting because none were requested. The public comment period ended on August 19, 2020.

In compliance with 30 CFR 884.14, Texas also allowed public input on the Texas Plan and held a public comment period during the development of the State regulations. The comment period on the regulatory amendments was from August 23, 2019, to September 23, 2019 (Administrative Record No. TX–708.04). Texas received no comments. In addition, in November, 2019, the Railroad Commission of Texas provided public notice that it was considering adoption of the amended and restated Texas Plan and provided an opportunity for public input on the proposal.

III. OSMRE's Findings

A. Texas's Explanation for Not Amending Certain Provisions

In response to our Part 884 letter, Texas stated that several items mentioned in the Part 884 letter do not appear to be applicable or require regulatory or plan changes. We agree.

First, in our Part 884 letter, we advised that certified States such as Texas are no longer authorized to set aside AML funds for future reclamation. In response, Texas stated that it has not undertaken future reclamation set aside and is no longer eligible to do so.

Second, in our Part 884 letter, we advised of certain changes related to