

comment period closed on May 30, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Only substantive changes to Ohio's rules are discussed below. Rule revisions which are not discussed below concern editorial changes intended to improve the clarity and readability of the rules.

A. Financial Interest Statements (OAC Section 1501:13-1-03)

1. Definition of "Employee"

Ohio is revising paragraph (D)(2) to provide that members of the Ohio Board on Unreclaimed Strip Mined Lands are included under the definition of "employee." Ohio is also revising this paragraph to provide that, for the purposes of OAC section 1501:13-1-03, hearing officers for the Ohio Reclamation Board of Review shall also be included within the definition of "employee". Ohio is also revising paragraphs (L) (1) and (2) to delete separate references to the Reclamation Board of Review's hearing officers because those hearing officers are to be included under the definition of "employee" in this rule.

The corresponding Federal rule at 30 CFR 705.5 defines "employee" to mean any person employed by the State Regulatory Authority who performs any function or duty under SMCRA and members of advisory boards who perform any function or duty under SMCRA if they perform decision-making functions for the State Regulatory Authority under State law or regulations. The Ohio Board on Unreclaimed Strip Mined Lands is a decision-making advisory board of this type and the hearing officers for the Ohio Reclamation Board of Review are employed by and perform functions for the State Regulatory Authority. Therefore, the Director finds that Ohio's inclusion of these persons under the State definition of "employee" is appropriate and no less effective than the corresponding Federal definition.

2. Use of Financial Interest Statement Form by Members of the Ohio Reclamation Board of Review

Ohio is revising paragraph (I)(1) to require that employees and members of the Ohio Reclamation Board of Review report all required information concerning employment and financial interests on Form OSM-23.

The corresponding Federal rule at 30 CFR 705.11 requires that employees of

the State Regulatory Authority and members of advisory boards established in accordance with State law to represent multiple interests who perform a function or duty under SMCRA must file a statement of employment and financial interest. The Ohio Reclamation Board of Review is an advisory board of this type. The Federal regulation at 30 CFR 705.10 requires that the required employment and financial interest information be collected on OSM Form 23. The Director therefore finds that Ohio's requirement that its employees and members of the Ohio Reclamation Board of Review file employment and financial interest statements using OSM Form 23 is no less effective than the corresponding Federal regulations at 30 CFR 705.10 and 705.11.

3. Acceptance of Gifts and Gratuities by Members of the Ohio Reclamation Board of Review

Ohio is revising paragraph (J)(1) to prohibit, with certain exceptions, the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review from coal companies which are conducting or seeking to conduct regulated activities or which have an interest that may be substantially affected by the performance of the Board members' official duty.

30 CFR 705.18 prohibits employees from soliciting or accepting gifts and gratuities from coal companies with interests that may be substantially affected by the employee's performance of the employee's official duty. Although there is no corresponding Federal regulation prohibiting acceptance of gifts and gratuities by members of advisory boards established in accordance with State law to represent multiple interests who perform a function or duty under SMCRA, the Director finds that the State requirement regarding members of the Ohio Reclamation Board of Review is not inconsistent with the Federal regulations at 30 CFR 705.18 or with the revisions which Ohio is making elsewhere in this rule.

4. Appeal of Remedial Actions

Ohio is revising paragraph (L)(1) to specify that nothing in OAC section 1501:13-1-03 modifies any right of appeal that any employee may have under State law of a decision by the Chief of the Division of Reclamation, Ohio Department of Natural Resources, on an employee's appeal of remedial action for prohibited financial interests.

Although there are no corresponding Federal regulations to this new

provision proposed in paragraph (L)(1), the Director finds that this provision is not inconsistent with the Federal rule at 30 CFR 705.21(a) which allows employees to file an appeal through established procedures within their State.

Ohio is also revising paragraphs (L)(2) to provide that only the Chief of the Division of Reclamation may appeal a remedial action to the Director of OSM. The corresponding Federal rule at 30 CFR 705.21(b) allows that the Head of the State Regulatory Authority may file an appeal of remedial action concerning a prohibited financial interest with the Director of OSM who will refer the appeal to the Conflict of Interest Appeals Board within the U.S. Department of the Interior. The Director finds that Ohio's proposed paragraph (L)(2) is not less effective than 30 CFR 705.21(b).

Ohio is also adding paragraph (L)(3) to provide that members of the Ohio Reclamation Board of Review may request advisory opinions from the Director of the Office of Surface Mining Reclamation and Enforcement on issues pertaining to an apparent prohibited financial interest. However, resolution of conflicts is governed by section 1513.05 and 1513.29 of the Ohio Revised Code.

Although there is no corresponding Federal regulation concerning appeals by members of advisory boards, the Director finds that the appeal provision proposed in paragraph (L)(3) is not inconsistent with the Federal regulations at 30 CFR 705.21 or with the revisions which Ohio is making elsewhere in this rule.

B. Yield Data for Pasture or Grazing Land (OAC Section 1501:13-7-05)

1. Ohio is adding the requirement in paragraph (A)(2)(c)(ii) that requests for approval of phase III reclamation on acreage reclaimed as pasture or grazing land (as well as acreage reclaimed to cropland or prime farmland) must include yield data.

The Federal regulations at 30 CFR 816/817.116(b)(1) require that, for areas developed for use as grazing land or pasture land, ground cover and production of living plants on the revegetated area shall be at least equal to success standards approved by the regulatory authority. Ohio's revegetation standards for pasture and grazing land at OAC 1501:13-9-15 paragraph (G)(3)(a) require that the planted species equal or exceed the county average yield for hay for any two years of the period of extended responsibility except the first year. In order to satisfy this requirement, requests for approval of