

phase III reclamation must therefore include the required yield data. The Director therefore finds that the proposed requirement in paragraph (A)(2)(c)(ii) is necessary for consistency within Ohio's regulations and is not consistent with the Federal regulations at 30 CFR 816/817.116(b)(1).

IV. Summary and Disposition of Comments

Public Comments

On October 21, 1994; March 17, 1995; and May 12, 1995, the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. OSM received the following three comments on the amendment dated April 1, 1995, from the Ohio Mining and Reclamation Association (OMRA).

(1) Ohio Has Not Held a Hearing on the Proposed Rule Changes

The Director believes that this comment is not immediately relevant to his decision on this amendment. The public hearing mentioned in the comment is part of Ohio's internal rule-filing process. If further rule changes become necessary as a result of comments received during Ohio's rule filing, Ohio will resubmit those proposed changes to OSM for review under the program amendment process.

(2) The Requirement at OAC 1501:13-1-03 for Members of the Ohio Board of Unreclaimed Strip Mined Land To File Financial Interest Statements Duplicates Requirements Already in Effect for Those Members of the Board Who Are Also Members of the Ohio Legislature

The Director agrees with the comment that there may be some duplication in these filings. However, OSM and the Division of Reclamation, Ohio Department of Natural Resources, have no control over the nature of the financial information required by other Ohio laws from members of the State legislature. That required information may or may not satisfy the reporting requirements of OAC 1501:13-1-03(I) and the corresponding Federal regulations at 30 CFR 705.17. OSM and Ohio must therefore maintain separate reporting requirements specific to the provisions of SMCRA, the accompanying Federal regulations, and the approved State regulatory program.

(3) The Division of Reclamation, Ohio Department of Natural Resources, May Not Have the Authority To Request the Indicated Financial Information From Members of the Ohio Board on Unreclaimed Strip Mined Land

The Director does not agree with this comment. As discussed above, OSM concurs with the appropriateness of including those board members under the State's definition of "employee." Ohio Revised Code section 1513.04(D) prohibits State employees from having a direct or indirect financial interest in any coal mining or reclamation operation. Ohio's proposed reporting regulations at OAC 1501:13-1-03 are therefore a reasonable extension of its legislated authority to prohibit financial conflicts of interest by its employees.

No other public comments were received. No public hearings were held as no one requested the opportunity to provide testimony.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from the Regional Director of the U.S. Environmental Protection Agency (EPA) and from the heads of four other Federal agencies and one State agency with an actual or potential interest in the Ohio program. Nonsubstantive comments were received from the EPA, the Soil Conservation Service, the Mine Safety and Health Administration, and the Ohio Historic Preservation Office. No other agency comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on September 22, 1994, and revised on March 8, and May 3, 1995.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not

enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Ohio program, the Director will recognize only the approved program, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Ohio of such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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