DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[SATS No. OH–252–FOR; Docket No. OSM–2011–0003; SATS No. OH–262–FOR; Docket No. OSM–2019–0006; S1D1S SS08011000 SX064A000 261S180110;S2D2S SS08011000 SX064A000 26XS501520]

Ohio Regulatory Program

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

ACTION: Final rule; partial approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM), is approving, in part, two amendments to the Ohio regulatory program (the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As proposed by Ohio, the amendment involves statutory and regulatory changes to its bonding program (*i.e.,* revising Ohio's alternative bonding system and providing the option for an applicant to post full-cost performance securities) and also includes statutory and regulatory changes pertaining to other subjects, such as abandoned mine land program funding, permitting standards, valid existing rights, remining, blasting, and topsoil handling. Ohio submitted this amendment, in part, to satisfy a program condition related to bonding inadequacies. We are removing this program condition.

DATES: The effective date is September 8, 2026.

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SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Statutory and Executive Order Reviews

I. Background on the Ohio Program

A. General

Section 503(a) of SMCRA 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 that are consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). Based on these criteria, the Secretary of the Interior conditionally approved the Ohio program effective August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Ohio program in the August 10, 1982 **Federal Register** (47 FR 34688). You can also find later actions concerning Ohio's regulatory program and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

B. Ohio Bonding Program

We announced conditional approval of Ohio's bonding provisions (bonding program) in the August 10, 1982, **Federal Register** (47 FR 34688) (Finding 18). In lieu of approving a bonding program requiring permittees to submit permit-specific performance bonds covering the full cost of reclamation for coal mining operations, we approved Ohio's request to employ an alternative bonding system (ABS), as provided by section 509(c) of SMCRA and 30 CFR 800.11(e). According to section 800.11(e), an ABS may be authorized if the following two conditions are met: (1) it would assure that sufficient money is available for the regulatory authority to complete the reclamation plan for any areas that may be in default at any time; and (2) it would provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

Ohio's ABS involves a flat-rate, per-acre performance bond in addition to monies deposited into a bond pool (Reclamation Forfeiture Fund), which is funded primarily by a cash severance tax collected from the permittees who elect to participate in the program. Permittees participating in the bond pool are required to post a flat rate performance bond of $2,500/acre for surface mining reclamation. We conditionally approved the bonding provisions but required changes to be made to Ohio's regulatory program, as codified at 30 CFR 935.11(h)(1), *Conditions of State regulatory program approval.*

C. OSM's Conditional Approval of Ohio's Bonding Program

The program condition that can be found at 30 CFR 935.11(h)(1) required Ohio to submit a program amendment that demonstrates how the ABS will ensure timely reclamation at mining sites for which a bond has been forfeited. On May 4, 2005, in accordance with 30 CFR 733.12(b), we sent Ohio's Department of Natural Resources (ODNR) a letter (referred to as a 733 letter) (Administrative Record No. OH–2185–00) referencing the program condition. The 733 letter required Ohio to submit the program amendment required by 30 CFR 935.11(h)(1) or potentially have the Secretary withdraw approval of the State program in whole or in part.

II. Submission of the Amendment

A. Submissions

We communicated with Ohio from 2007–2011 through workgroups, meetings, and letters to discuss concerns and the steps being taken to address the issues identified in the 1982 conditional approval and the 733 letter we sent in 2005. After those communications, Ohio enacted legislation adding and revising statutory provisions and added related regulatory provisions to address the issues identified in our conditional approval and the 733 letter. Ohio submitted these changes as program amendments on five separate occasions as described below. Further description and discussion of the submitted provisions are in the Findings section of this document.

1. March 6, 2007 Submission: By letter dated March 6, 2007 (Administrative Record No. OH–2185–28), Ohio sent us an amendment to its program, known by Ohio as Program Amendment 82 (PA 82). PA 82 was primarily intended to satisfy the program condition that is found at 30 CFR 935.11(h)(1), which is related to Ohio's ABS and was supported by changes that were included in Ohio House Bill 443 (HB 443) (approved January 4, 2007), 2006 Ohio Laws 189. The submission includes statutory changes to Chapter 1513, *Coal Surface Mining,* and Chapter 5749, *Severance Tax,* of the Ohio Revised Code (ORC). The submission also includes statutory provisions involving other matters, such as regulatory and Abandoned Mine Land (AML) program funding and permitting procedures for determining the potential for acid mine drainage.

2. July 27, 2009 Submission: By letter dated July 27, 2009 (Administrative Record No. OH–2185–49), Ohio sent us an amendment to its program, referring to it as an update of their March 6, 2007, submission of PA 82. The submission includes: (1) statutory changes to ORC Chapter 1513 that resulted from three legislative actions, including portions of House Bill 119 (HB 119) (approved June 30, 2007), 2007 Ohio Laws 15; Senate Bill 386 (SB 386) (approved January 6, 2009), 2008 Ohio Laws 139; and Senate Bill 73 (SB 73) (approved June 15, 2009), 2009 Ohio Laws 2; (2) regulatory changes to Chapter 1501, *Department of Natural Resources, Administration and Director,* of the Ohio Administrative Code (OAC); (3) an opinion from the chief legal counsel for Ohio's Division of Mineral Resources Management (DMRM) regarding the cap on liability of Ohio's alternative bonding system; and (4) a 2009 actuarial report analysis of Ohio's bond pool. Because additional changes were forthcoming and at the State's request, we did not process this submission as a separate program amendment.

3. April 1, 2011 Submission: By letter dated April 1, 2011 (Administrative Record No. OH–2185–54), Ohio sent us an amendment to its program, referring to it as an update of their previous submittals dated March 6, 2007, and July 27, 2009. This submission includes changes to statutory and regulatory provisions regarding performance bonds on coal mining operations as effected by HB 443. In addition to these changes, Ohio added or changed statutory and regulatory provisions pertaining to topics such as valid existing rights, remining, abandoned mine lands, blasting, and topsoil handling, among others. The submission includes: (1) statutory changes to ORC Chapters 1513 and 5749 that were affected by HB 119 and SB 73, as well as Senate Bill 181 (SB 181) (approved June 13, 2010), 2010 Ohio Laws 47; and House Bill 163 (HB 163) (approved June 30, 2011), 2011 Ohio Laws 36; (2) regulatory changes to OAC Chapter 1501; and (3) an actuarial report analysis of Ohio's Reclamation Forfeiture Fund submitted in July 2009. Ohio also provided agency guidance documents with their submission for the purposes of adding clarity and support and are not considered part of this amendment.

4. July 26, 2011 Submission: By letter dated July 26, 2011 (Administrative Record No. OH–2185–61), Ohio sent us an amendment to its program, referring to it as an update to their previous submittals of March 6, 2007, July 27, 2009, and April 1, 2011. The amendment includes: (1) statutory changes to ORC Chapter 1513 as effected by House Bill 163; and (2) a 2011 actuarial report on the Reclamation Forfeiture Fund.

5. April 11, 2019 Submission: By letter dated April 11, 2019 (Administrative Record No. OH–2198), Ohio sent us an amendment to its program, known by Ohio as Program Amendment 87 (PA 87). This amendment includes a regulatory definition of ''*transfer, assignment, or sale of permit rights*'' at OAC Chapter 1501:13–1, *Division of Mineral Resources Management-Coal, Administrative Procedures,* that is related to a bonding provision that was submitted for approval under the April 1, 2011 submission. Because the amendments are interrelated, we are incorporating the April 2019 submission into this notice, as summarized below.

With this notice, we are issuing decisions on the provisions of all five submissions. In the Findings section that follows, we describe the substantive changes to the Ohio program as a result of these submissions. Please note, as further described in Section III.C, some provisions have been rescinded/reversed or are being addressed in other State program amendment submittals. In addition to these substantive changes, editorial changes to the Ohio program were also included in the submissions. Editorial changes include: changes of address; inclusion of website addresses; changes in division names and titles; correction of typographical errors; chapter titles; paragraph references; citations; use of the phrase ''performance security'' rather than the term ''bond;'' inclusion of reference to the National Register of Historic Places; a name change to ''reclamation commission;'' use of the terms ''applicant'' and ''permittee'' rather than ''operator'' to clarify obligations and responsibilities; and the incorporation by reference to dates of Federal regulations and Federal laws. We do not make specific findings regarding all of these editorial changes, such as those included in ORC 1513.071, ORC 1513.17, and ORC 1513.37, which are not otherwise referenced in this notice, but we state here that those changes do not impact the compliance of the approved program with SMCRA.

B. Public Notice

We announced receipt, opened the public comment period, and provided an opportunity for a public hearing or meeting on the adequacy of the five submissions on three occasions:

1. April 30, 2007: We announced receipt of the March 6, 2007, program amendment submission in the April 30, 2007, **Federal Register** (72 FR 21176) (Administrative Record No. OH–2185–32). We reference this document as SATS No. OH–252.

2. February 14, 2012: We reopened the comment period to announce receipt and incorporate the three program amendment submission updates (July 27, 2009, April 1, 2011, and July 26, 2011) that Ohio made to its initial 2007 program amendment submission in the February 14, 2012, **Federal Register** (77 FR 8185) (Administrative Record No. OH–2185–65). We referenced this document as Docket No. OSM–2011–0003, SATS No. OH–252.

3. September 5, 2019: We announced receipt of the April 11, 2019, program amendment submission in the September 5, 2019, **Federal Register** (84 FR 46703) Administrative Record No. OH–2198–05). We reference this document as SATS No. OH–262.

All public comments received from these proposed rule notices are addressed in the Public Comments section of this notice. No public hearing or meeting was requested.

C. Actuarial Analysis Reports

Ohio included actuarial analysis reports as part of two program amendment submissions (2009 and 2011). Ohio also provided us with copies of subsequent actuarial analysis reports for 2015, 2017, 2019, 2021, 2023, and 2025. The actuarial reports provide information, analysis of Ohio's bond pool, and recommendations about the fiscal condition of Ohio's bond pool for the previous two-year time period as prepared by Pinnacle Actuarial Resources (2009, 2011, 2015, 2017, and 2019, and 2025 reports) and Taylor & Mulder (2021 and 2023 reports). These reports were used by Ohio and the Reclamation Forfeiture Fund Advisory Board (RFFAB or Board) to make recommendations to the Governor about the solvency of the Reclamation Forfeiture Fund. We discuss the actuarial reports in section III.D of this notice.

III. OSM's Findings

A. Legislative Actions Resulting in Statutory and Regulatory Changes

As mentioned above, we announced changes to statutory provisions resulting from the passage of six legislative actions (HB 443 of 2006, HB 119 of 2007, SB 386 of 2008, SB 73 of 2009, SB 181 of 2010, and HB 163 of 2011). As legislative activity progressed from 2007 to 2011, some of the provisions of the more recent bills modified previously enacted bills and prompted Ohio to revise its regulations under the Ohio Administrative Code accordingly. Several provisions have been rescinded or amended by other legislative actions and others have been included in other Ohio Program Amendment packages (see Section V. OSM's Decision under the header ''No Findings Issued'' in addition to the discussion below). We summarize the statutory and regulatory changes affected by the bills in a comprehensive manner, presenting the provisions in final form after all legislative actions have occurred.

These statutory and regulatory provisions involve bond and non-bond related provisions and address, among other things, the alternative bonding system, full-cost bond requirements, regulatory and abandoned mine land program funding, permitting procedures for determining the potential for acid mine drainage, valid existing rights, remining, abandoned mine lands, blasting, and topsoil handling. The statutory provisions are codified at ORC Chapter 1513, *Coal Surface Mining,* and Chapter 5749, *Severance Tax.* The regulatory provisions are codified at OAC Chapter 1501, *Department of Natural Resources,* as summarized below.

B. Bond Related Statutory Provisions

The following statutory changes affected the financial system by which operators and the State assure that lands and resources adversely affected by coal mining are reclaimed, including the funding sources of Ohio's Reclamation Forfeiture Fund (bond pool). These statutory changes include, among other things, adding trust funds as an acceptable form of performance security (financial assurance), allowing operators the option to post a full-cost performance security, and adjusting tax rates.

1. ORC 1513.01: Coal Surface Mining Definitions (Performance Security) (Revised by HB 443 and SB 73)

Ohio revised ORC 1513.01 to add the term *performance security* at subsection (W). ORC 1513.01(W) defines *performance security* as a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in the State; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States or Ohio or a municipal corporation in Ohio; trust fund of which the State is the primary beneficiary, or other form of financial guarantee that is acceptable to the State. Through SB 73, Ohio then revised the definition to delete annuities from the list of acceptable performance security and to clarify that the State is the primary beneficiary, rather than the conditional beneficiary, of any trust fund.

Correspondingly, Ohio has amended or deleted terms throughout ORC chapter 1513, in which the word *bond* appears, such as in the terms *performance bond* and *bond coverage,* and replaced those terms with the term *performance security,* or used both. Ohio also made some corresponding revisions to the definitions of *performance security, collateral bond,* and *trust fund* in its regulations at OAC 1501:13–1–02. For ease of discussion, we include these regulatory revisions here rather than in Part C, below.

2. OAC 1501:13–1–02: Definitions (Performance Security, Collateral Bond, Trust Fund, Incremental Area, and Incremental Mining Unit)

In response to the addition of ORC 1513.01(W), Ohio modified the term *performance bond* in its regulations to use the term *performance security* instead, currently at OAC 1501:13–1–02(LLLL), defining it as a form of financial assurance that includes surety bonds (which is further defined at subsection (LLLLLL)), collateral bonds (which is further defined at subsection (DD)), a trust fund (which is further defined at subsection (WWWWWW) and described in more detail below), self-bond, or a combination thereof, by which the permittee assures faithful performance of all the requirements of ORC Chapter 1513, OAC Division 1501:13, and the requirements of the permit and the reclamation plan. Ohio also revised the definition of *collateral bond,* currently at subsection (DD), to clarify that the sum certain identified in the indemnity agreement is payable *only* to the State. The term retained the list of acceptable collateral as: cash deposits in one or more Federally insured accounts, negotiable United States or Ohio bonds, negotiable certificates of deposit, or an irrevocable letter of credit. Ohio also added and defined the term *trust fund,* currently at subsection (WWWWWW), to read: money, securities or other property held by a trustee for the benefit of the State that is devoted to the purpose of providing assurance that funds will be available when needed to comply with Chapter 1513 of the Revised Code and rules adopted thereunder and that irrevocably establishes the State as the primary beneficiary. In 2016, Ohio removed ''self-bond'' from the list of acceptable performance security under subsection (LLLL), and in 2018, moved trust funds from that list into the list of acceptable collateral bonds under subsection (DD), along with language requiring that trust funds must name the state as primary beneficiary in an amount sufficient to complete the reclamation plan for any and all areas that may default at any time and provided solely for meeting the performance security requirements of the OAC.

Finally, Ohio revised the term *incremental area,* currently at subsection (PPP), to apply the term exclusively to those permits for which an operator has elected to participate in the bond pool, and created the term *incremental mining unit,* currently at subsection (QQQ), to apply exclusively to those permits for which an operator has elected to conventionally bond. Ohio defines *incremental area* as that area within the permit area that the permittee affects by its operations in the particular permit year, and *incremental mining unit* means an area within a permit of sufficient size and configuration to provide for efficient mining and reclamation operations, subject to approval by DMRM, where mining and reclamation activities are authorized and for which a site-specific, full-cost performance security has been determined.

OSM Finding (ORC 1513.01(W) and OAC 1501:13–1–02): The term *performance security,* defined at ORC 1513.01(W) and OAC 1501:13–1–02(LLLL), has no exact counterpart in SMCRA or the Federal regulations. However, the Federal regulations at 30 CFR 800.5, *Definitions,* define the terms *surety bond* and *collateral bond.* Both surety bond and collateral bond, as defined at 30 CFR 800.5(a) and (b), respectively, are considered authorized forms of performance bond under 30 CFR 800.12, *Form of the performance bond.* We approved Ohio's definition of *surety bond,* currently at OAC 1501:13–1–02(LLLLLL), as no less effective than the Federal term at 30 CFR 800.5(a) when we conditionally approved Ohio's program in 1982. Nothing in this amendment changes that finding, and therefore the surety bond component of Ohio's definitions of *performance security* in both statute and regulation are likewise approved.

Next, Ohio's statutory and regulatory definitions differ only in that the regulation uses the term *collateral bonds,* which Ohio further defines at OAC 1501:13–1–02(DD), while the statute avoids the term collateral bonds, instead specifically naming the same types of collateral listed in OAC 1501:13–1–02(DD), along with a proviso allowing other forms of financial assurance acceptable to DMRM. The regulatory definition also specifies that these instruments assure faithful performance of all the requirements of the Ohio regulatory program, the permit, and the reclamation plan. As with the term *performance security,* we approved Ohio's regulatory definition for the term *collateral bond* when we conditionally approved Ohio's program in 1982 because it was consistent with the Federal definition at 30 CFR 800.5(b).

Regarding Ohio's revision to the term *collateral bond* specifying that the sum certain is payable only to the State, we find that this revision is consistent with existing descriptions of each form of collateral listed in subsection (DD) and the corollary Federal descriptions at 30 CFR 800.5(b) and distinct from the requirement on Federal lands pursuant to the State-Federal Cooperative Agreement between Ohio and the Secretary of the Interior whereby the sum certain is payable to both Ohio and the United States. Regarding Ohio's addition of trust funds as an acceptable form of collateral and its definition of the term ''trust fund,'' we note that while the Federal regulations do not specifically list trust funds under 30 CFR 800.5(b), or define the term, we have approved trust funds as acceptable forms of collateral on the basis that, subject to certain limitations and safeguards included in the State's regulations, trust funds present no greater risks than the other forms of collateral bond included in 30 CFR 800.5(b) (subject to the limitations in 30 CFR 800.21). *See, e.g.,* 70 FR 25472, 25474 (May 13, 2005) (approving similar addition to Pennsylvania's regulatory program). Ohio lists most of these limitations under OAC 1501:13–07–03(B)(10), which we address below. However, nothing in the general requirements found in the definition of trust fund at subsection (WWWWWW), nor in the description provided under the definition of collateral bond at subsection (DD)(5), renders the Ohio program less effective than 30 CFR 800.5(b). These provisions are also consistent with our prior approval in Pennsylvania, in which we stress that the trust fund irrevocably names the State as the beneficiary, and its purpose must ensure compliance with the approved State program. Therefore, we approve the definition of trust fund at subsection (WWWWWW) and the inclusion of trust funds as acceptable collateral under subsection (DD). We also find that Ohio's choice to move trust funds from the definition of *performance security* to the list of approved collateral at subsection (DD) makes no practical difference to the program. Therefore, even though Ohio had not submitted, and we had not published, notice of this particular revision before we make our finding here, we believe that notice and public comment under section 553 of the Administrative Procedure Act (APA) for this single immaterial revision is impracticable, unnecessary, and contrary to public interest. See 5 U.S.C. 553(b)(B).

Turning back then to the definition of *performance security,* we note that removal of self-bond from the definition at OAC 1501:13–1–02(LLLL) is part of a separate program amendment docketed at SATS No. OH–258–FOR, so we will address it in that amendment. Otherwise, having approved the terms *surety bond* and *collateral bond,* Ohio's definition of *performance security* at subsection (LLLL) is no less effective than 30 CFR 800.5(a) and (b), and we approve it. We also approve Ohio's statutory definition of *performance security* at ORC 1513.01(W) to the extent it lists surety bonds and specifically names the types of acceptable collateral for collateral bonds subject to additional limitation by Ohio's regulations at OAC 1501:13–1–02(DD) and 1501:13–7–03. We note that the term defined at ORC 1513.01(W) has no independent operative effect but is subject to its use within the provisions of Chapter 1513 of the Ohio Revised Code that used to reference *performance bond* and similar phrasing.

Regarding Ohio's inclusion of ''other forms'' of financial assurance acceptable to DMRM, we note that while the Federal regulations do not contain such an open-ended catchall, 30 CFR 800.5(b) does contain two additional forms of collateral bond: a perfected, first-lien security interest in real property in favor of the regulatory authority, and other investment-grade rated securities that meet certain requirements. To the extent that other forms of financial security ''acceptable to DMRM'' are limited to those listed under the Federal regulations or are otherwise approved by us as part of the approved program, we approve Ohio's provision contemplating other forms of financial security acceptable to DMRM. Having addressed and approved each component of the term *performance security* at ORC 1513.01(W) and OAC 1501:13–1–02(LLLL) of OAC and finding them to be no less effective than the Federal regulations, we approve these provisions.

Finally, while the term *incremental mining unit* is not defined in the Federal regulations, Ohio's definition is nearly identical to, and therefore no less effective than, the Federal regulation at 30 CFR 800.11(b)(4), which dictates that independently bonded increments of a mining permit must be of a sufficient size and configuration to provide for efficient reclamation by the regulatory authority should the bond become forfeited. The Federal regulations also do not define the term *incremental area,* which Ohio exclusively uses here to describe how an applicant or permittee relying on the Reclamation Forfeiture Fund reconciles their $2500/acre fee to participate in Ohio's ABS under OAC 1501:13–7–01(C)(2) and –7–02(A)(1). Importantly, the concern about the increment size and configuration is absent because the increments under a bond pool are not ''independent'' in the sense that there is not a fixed financial instrument supporting the particular increment. While the Federal program does not establish any specific ABS, Ohio's definition of *incremental area* for this purpose is not inconsistent with the Federal regulations. For these reasons, we approve the definitions of both *incremental mining area* and *incremental mining unit* at OAC 1501:13–1–02(PPP) and (QQQ), respectively.

3. ORC 1513.02: Chief of Division of Mineral Resources Management—Powers and Duties (Civil Penalties) (Revised by HB 443)

In addition to minor editorial corrections, Ohio revised subsection (E)(3) to direct the deposit of all funds collected from civil penalties for violations of ORC Chapter 1513 into the Reclamation Forfeiture Fund created under ORC 1513.18, discussed below. Before this revision, civil penalty funds were directed to Ohio's coal mining administration and reclamation reserve fund created under ORC 1513.181 (repealed).

OSM Finding: The deposit of civil penalties to the bond pool will contribute to the Reclamation Forfeiture Fund's solvency as required at 30 CFR 800.11(e) and promote fulfillment of the program condition described at 30 CFR 935.11. Further, 30 CFR 845.21 authorizes the Director of OSM to use civil penalties for reclamation, with which Ohio's revision is consistent. As we note below in more detail, the coal mining administration and reclamation reserve fund has been terminated, and its functions have been consolidated with those of other funds into the Mining Regulation and Safety Fund. One of the functions of this consolidated fund includes the general administration and enforcement of Ohio's approved coal mining regulatory program. States are required under 30 CFR 732.15(d) to ensure that they have sufficient funding to implement, administer, and enforce their approved programs. In lieu of civil penalties and permit fees (discussed below), Ohio has decided to fund administration and enforcement of its approved program through an increase of the severance tax on coal production at ORC 5749.02. We have seen no indication that diverting the civil penalties away from general administration and enforcement has jeopardized Ohio's compliance with 30 CFR 732.15(d), but we will continue to monitor through our regular oversight function. Therefore, we approve the revision to ORC 1513.02(E)(3).

4. ORC 1513.07: Coal Mining and Reclamation Permit—Application or Renewal—Reclamation Plan (Permit Application and Renewal Fee, and Estimated Cost of Reclamation) (Revised by HB 443 and SB 73)

In 2007, Ohio revised subsection (B)(1) to delete the permit application and renewal fee of seventy-five dollars per acre that was credited to the coal mining administration and reclamation reserve fund under ORC 1513.181 (repealed) and used to assist funding DMRM's operational costs (with the possibility of transfers to the Reclamation Forfeiture Fund at ORC 1513.18 to support the bond pool). In 2009, Ohio further revised this section by amending the reclamation plan requirement at subsection (C) to clarify that the applicant is responsible for providing adequate information in the application in the detail necessary for DMRM to determine the estimated site reclamation cost in the event of forfeiture. Ohio consequently eliminated the requirement at subsection (C)(5) that the permittee provides the estimated cost of reclamation per acre in the permit application.

OSM Finding: Similar to the civil penalties discussed above, Ohio chose to eliminate its permit and renewal fees in favor of generating additional revenue to fund the administration and enforcement of its approved program through an increase of its severance tax on coal production at ORC 5749.02. As with civil penalties, we approve the removal of the permit and renewal fee provision from ORC 1513.07(B)(1) and will continue to monitor Ohio's funding of its program through our regular oversight function to ensure it remains sufficient.

Concerning Ohio's addition of a requirement that permit applicants provide information in detail necessary for DMRM to determine estimated reclamation costs, and Ohio's corresponding elimination of the applicant-provided cost estimate, we find that the revisions render Ohio's program no less effective than 30 CFR 780.18, *Reclamation Plan; General requirements,* and 30 CFR 800.14, *Determination of bond amount,* at meeting the requirements of SMCRA. Section 780.18(b)(2) of the Federal regulations requires that each reclamation plan includes a detailed estimate of the cost of reclamation, with supporting calculations, of the operations required to be covered by a performance bond under 30 CFR part 800. However, § 800.14(a) specifies that the amount of the bond must ultimately be determined by the regulatory authority and based on, but not limited to, the estimate submitted by the permit applicant. 30 CFR 800.14(a)(1), (4). While Ohio's elimination of the requirement that the applicant submit an estimate seemingly contradicts the Federal requirement at 30 CFR 780.18(b)(2), we find that Ohio's approach overall should achieve greater accuracy and consistency at meeting the requirement of 30 CFR 800.14(a)(1) by requiring necessary detail in the reclamation plan for DMRM to determine cost in the first instance. Therefore, we approve the revisions to ORC 1513.07(C) and (C)(5).

5. ORC 1513.08: Filing Performance Bond or Deposit of Cash or Securities (Revised by HB 443, HB 119, SB 73)

a. Subsection (A) (General Requirements)

In addition to revising the word *bond* to *performance security,* Ohio revised this section to remove the words ''*but before the permit is issued*'' that described when an applicant must file performance security after the permit application is approved. Ohio also initially removed, but then replaced, language requiring that the performance security be payable to the State and conditioned on the faithful performance of all the requirements of Ohio's coal mining statutes and regulations (Ohio's approved program) and the terms and conditions of the permit.

OSM Finding: Although the phrase ''*but before the permit is issued*'' has been deleted from ORC 1513.08(A), Ohio provides clarity in other provisions about when performance security must be filed. Ohio's regulations at OAC 1501:13–7–01(A)(2) generally prohibit surface acreage disturbance before performance security is filed with DMRM. Moreover, subsections (A)(6)(a)(ii) and (A)(6)(b)(ii) of this rule specify that applicants must file the performance security before the permit is issued for the particular area or increment to be affected. Relying on this regulation, we find that Ohio's requirement to file a performance security after permit approval remains no less effective than the Federal regulations at 30 CFR 800.11(a), *Requirement to file a bond,* and approve ORC 1513.08(A). If we determine in the future that Ohio is issuing permits before receiving the bond, we may require Ohio to submit a program amendment to revise its program to reflect our understanding.

b. Subsection (B) (Full-Cost Performance Security Amount and Performance Security Election)

Ohio split up subsection (A) into subsections (B) and (C) and significantly revised the existing language to create two options for providing performance security. In subsection (B), Ohio authorizes DMRM to determine the estimated cost of reclamation if the reclamation would need to be performed by the State in the event of forfeiture (*i.e.,* site-specific, conventional, full-cost bond). Subsection (B) provides that DMRM will use the information included in the permit application, requirements of the approved permit, and other enumerated considerations to determine the amount of the performance security. It further provides that Ohio will notify the applicant via certified mail of the estimated cost, and the applicant must provide written notice indicating the method by which it is providing the performance security. In 2023, Ohio amended this subsection, as well as subsections (E) and (F), to accommodate electronic notice. Because these revisions were not part of this submittal, we do not address those changes in this decision. Rather, we have contacted DMRM to coordinate Ohio's submission of this, and other intervening revisions not already accounted for, as a separate state program amendment.

OSM Finding: We have determined that the revised language in this subsection is nearly identical to the Federal requirements at 30 CFR 800.14(a), *Determination of bond amount* and, therefore, is no less effective than the Federal regulations. We do note, however, that subsection (B) does not list an estimate provided by the applicant as a factor DMRM considers when arriving at its estimate. We address the issue above in our analysis of ORC 1513.07 and incorporate those findings here. We also note that in its redrafting of these subsections, Ohio moved the requirement that the total bond posted for the entire area under one permit not be less than $10,000, which was derived from section 509(a) of SMCRA, 30 U.S.C 1259(a), and 30 CFR 800.14(b), to subsection (C) discussed below. The $10,000 minimum total bond is still required for the performance security posted according to subsection (B). Accordingly, we approve the changes to ORC 1513.08(B).

c. Subsection (C) (Performance Security Options)

Ohio created subsection (C) to contain some general performance security requirements and to permit an alternative method for the applicant to provide performance security distinct from the conventional approach described in the section above regarding subsection (B). Subsection (C) contains a modified version of Ohio's previous system, which had required all applicants to participate in a bond pool, a form of an ABS. The bond pool is comprised of funds collected from permittees and other sources, placed in the bond pool, and, if necessary, available to Ohio to reclaim sites in the pool, with certain conditions described below. Paragraph (1) provides that if an operator elects to provide performance security without reliance on the bond pool, it must do so in compliance with subsection (B) for the increments of land on which it will conduct coal mining and reclamation operations under the initial term of the permit. Paragraph (2) provides that the applicant may elect to participate in the bond pool, which requires the applicant to provide a performance security in an amount equal to $2500/acre (flat rate) and pay an additional severance tax levied under ORC 5749.02(A)(8) on each ton of coal produced. Paragraph (2) also provides that in order for an applicant to be eligible to participate in the bond pool, the applicant, an owner or controller of the applicant, or an affiliate of the applicant shall have held a permit issued under ORC Chapter 1513 for any coal mining and reclamation operation for a period of not less than five years.

The remaining provisions are not separately numbered but are contained within subsection (C) generally. Subsection (C) provides that in the event of forfeiture of the flat rate performance security, the difference between the flat-rate performance security and the estimated cost of reclamation determined by DMRM according to subsection (B) will come from the Reclamation Forfeiture Fund as needed to complete reclamation (discussed more at ORC 1513.16). The requirement that no performance security (applying now to both conventional and flat rate) for the entire area to be mined under one permit will not be less than $10,000 is retained. Subsection (C) also retains the provision describing the area of land required to be covered by the performance security and conditions that trigger the requirement to file additional performance security for succeeding increments of the approved permit area, and adds that if a permittee intends to mine areas outside of the approved permit area, it must file additional performance security for those areas.

d. Coal Preparation Plant and Coal Refuse Disposal Areas

In 2007, Ohio added a provision requiring applicants to file full-cost bond for coal preparation plants and coal refuse disposal areas not located within the permitted area of a mine. In 2009, Ohio revised this provision to allow permittees to include these operations in the bond pool under paragraph (2), subject to the same conditions, and allowed those that had initially posted full-cost bond to convert to the bond pool. In 2021, through House Bill 110, 2021 Ohio Laws 30, Ohio added a proviso that if a permit is transferred, assigned or sold, the transferee is not eligible for the bond pool if they cannot meet the five-year requirement under paragraph (2), even if the name of the permittee otherwise remains the same after the transfer, assignment or sale.

OSM Finding: We have determined that the changes to this subsection are no less effective than the Federal regulations at 30 CFR 800.11(e), 800.14(b), and 800.17.

First, Ohio's additional option for applicants to provide full-cost performance security, discussed in more detail above for subsection (B), is as effective as 30 CFR 800.11(a) and 800.14 and is, in fact, the only option currently provided under the Federal program. Accordingly, we approve ORC 1513.08(C)(1). Next, the Federal regulations at 30 CFR 800.11(e) allow for alternative bonding systems if those systems both assure that the regulatory authority has sufficient funds to conduct reclamation for any areas that may be in default at any time and provide a substantial economic incentive for permittees to comply with reclamation requirements. Ohio's alternative bonding system described at 1513.08(C)(2) is no less effective than 30 CFR 800.11(e). The Reclamation Forfeiture Fund that Ohio will use to pay for reclamation work for areas in default has sufficient funds to cover possible reclamation work, as we analyze in our discussion of the program condition and actuarial reports on the bond pool below. We find that the $2,500 per acre performance security that applicants will provide under the alternative bonding system provides a substantial economic incentive to comply with reclamation requirements, and the severance tax levied on coal production is currently generating sufficient revenue for the bond pool. As with the alternative bonding systems in all States that elect to use them, we will continue to monitor its sufficiency through our regular oversight function. Regarding the provision that the Reclamation Forfeiture Fund provides the difference between flat rate performance security and the estimated cost of reclamation, we address this in more detail below regarding ORC 1513.18 and incorporate those findings here.

The provision requiring an applicant or its owners, controllers, or affiliates, to have held a permit for at least five years to be eligible for the bond pool has no direct Federal counterpart but is not inconsistent with the Federal requirement at 30 CFR 800.11(e)(1), that alternative bonding systems carry sufficient funds for the regulatory authority to conduct reclamation for areas in default. Restricting bond pool participation to more experienced and established operators will reduce the chances of bond default occurring, thereby reducing expenditures from the bond pool funds. Ohio has the discretion to limit its bond pool participants in such manner. Further, we find that the same discretion supports Ohio's revision in 2021 that restricts a transferee that does not meet the five-year requirement from participating in the bond pool even if the named permittee remains the same. Even though Ohio had not submitted, and we had not published, notice of this proviso before making this finding, we find that notice and public procedure under section 553 of the APA for removal of these references in ORC 1513.18 are impracticable, unnecessary, and contrary to public interest. See 5 U.S.C. 553(b)(B). Notification is unnecessary because we interpret this revision to be a clarification of Ohio's existing requirement, not a new restriction, and that even if it were new, it is more restrictive, which is always within the State's discretion.

Ohio's retention of the $10,000 minimum bond amount is identical to the Federal requirements at 30 CFR 800.14(b), and we approve its application to both methods of providing financial security. Similarly, we find that Ohio's provision requiring that permittees who intend to mine areas outside the approved permit area must file additional performance security is merely an additional statement of what Ohio's program already required.

The requirement for applicants to post bonds for coal preparation plants and coal refuse disposal areas is no less effective than the Federal regulations at 30 CFR 800.17(a) and (b), which requires applicants to post bonds long term surface facilities, including coal preparation plants and refuse disposal areas. Ohio providing the option to bond coal preparation plants and coal refuse disposal areas with full-cost bonds or under the bond pool program is no less effective than the Federal regulations at 30 CFR 800.11 and 800.14 for the same reasons described earlier in this finding.

For these reasons, we have determined that the changes to this subsection are no less effective than the Federal regulations. Accordingly, we approve the changes to ORC 1513.08(C).

e. Subsection (D) (Performance Security Liability)

Ohio revised subsection (D) to add that a permittee's liability under the performance security is limited to the obligation established under the permit, including completion of the reclamation plan to return the land to a condition capable of supporting the postmining land use that was approved in the permit.

OSM Finding: We have determined that, when read in conjunction with subsection (A), above, and ORC 1513.07, this provision is no less effective than 30 CFR 800.16(c), which requires that performance bond be conditioned on the faithful performance of all the requirements of the coal mining laws and regulations and the approved permit and reclamation plan. Subsection (A) conditions performance security on the faithful performance of all the requirements of Ohio's approved coal mining statutes and regulations and the terms and conditions of the permit, and ORC 1513.07 requires that the permit and reclamation plan must meet the requirements of Ohio's approved coal mining statutes and regulations. Therefore, we approve the change to ORC 1513.08(D).

f. Subsection (E) (Bond Adjustments—Agency Initiated)

Subsection (E) is new and prescribes the requirements for full-cost performance security adjustments. When the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases, the State will adjust the reclamation estimate and corresponding amount of performance security. If the performance security was provided under the bond pool and a cessation order was issued for failure to abate a violation of the contemporaneous reclamation requirement, the State may require the permittee to increase the amount of performance security from $2,500 per permitted acre to $5,000 per permitted acre.

The provisions also require the State to notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed performance security adjustment. The permittee may request an informal conference to discuss the proposed adjustment, and the State will provide such an informal conference. If the State requires an increase in the performance security amount, the permittee must provide the additional performance security. If the State determines a decrease in performance security is warranted, the State will send written notice of the amount of reduction to the permittee, and the permittee may reduce the amount of performance security in the amount determined by the State.

OSM Finding: We have determined that the provisions in this section are no less effective than the Federal regulations at 30 CFR 800.15(a) and (b). The conditions under which bond adjustment occurs and the process for adjusting the bond are identical to the Federal regulations. Regarding the increase of the flat-rate performance security, we find that it is a prudent measure to help ensure the bond pool's compliance with 30 CFR 800.11(e)(1) by transferring additional liability away from the Reclamation Forfeiture Fund and onto operators at high risk of default. Therefore, we approve the addition of ORC 1513.08(E).

Subsection (F) (Bond Adjustment—Permittee Initiated)

Subsection (F) is new and provides that a permittee may request a reduction in the amount of full-cost performance security. The request must include documentation proving that the amount of performance security provided by the permittee exceeds the estimated cost of reclamation. The State will respond to each request and, after review of the documentation, determine whether the performance security exceeds the reclamation cost estimate. Following the determination, the State will determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of performance security in the amount determined by the State. Adjustments in the amount of performance security are not considered release of performance security and, therefore, not subject to the bond release provisions of ORC 1513.16.

OSM Finding: We have determined that the provisions in this section are no less effective than the Federal regulations at 30 CFR 800.15(c). The procedures and parameters of permittee bond reduction requests are identical in this section and the Federal regulations. Therefore, we approve the addition of ORC 1513.08(F).

Subsection (G) (Provider Requirements)

Ohio revised subsection (G) to add that, if the performance security is a cash deposit or a certificate of deposit of a bank or Savings and Loan association, that business must be licensed and operating in Ohio. The revision further adds that DMRM must review the performance security documents, approve of their use, and then notify the applicant of the determination.

OSM Finding: We have determined that the provisions in this section are no less effective than the Federal regulations at 30 CFR 800.16(e), which requires all bonds to provide a mechanism for the bank or surety company to notify the regulatory authority of suspension or revocation of its license. We also note that 30 CFR 800.5(b) and 800.21(a) and (d) require the financial institution (or account) holding these performance security instruments to be Federally insured, which we understand is a requirement for its State license. The provisions in this section of the Ohio amendment likewise require businesses facilitating bond instruments to be licensed in Ohio. Therefore, we approve the revisions to ORC 1513.08(G).

Subsection (I) (Trust Fund)

Ohio added subsection (I), which authorizes the use of trust funds as performance security, requiring that the State must be the primary beneficiary of the trust and the custodian must be a bank, trust company, or other financial institution licensed and operating in Ohio. Subsection (I) also specifies that DMRM will review the trust document, approve or disapprove it, and notify the applicant of the determination.

OSM Finding: We have determined that the provisions in this section do not have direct Federal counterparts but are not inconsistent with the Federal regulations at 30 CFR part 800. As we note in our finding on the definition of the term *performance security,* above, and in more detail below for ORC 1513.16, we acknowledge that trust funds are not explicitly authorized as a bonding instrument pursuant to 30 CFR 800.12. We incorporate our findings for those provisions, which include significantly more detail, and simply note here that we approve Ohio's addition of trust funds as a form of performance security consistent with our approval in Pennsylvania; we also note that Ohio's program is similar to our approval of trust funds as a form of ABS to fund water treatment in the

Federal program in Tennessee. Therefore, we approve the addition of ORC 1513.08(I).

Subsection (J) (Provider Insolvency)

Ohio added subsection (J) to require the operator to submit a plan for replacement of performance security if a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security becomes insolvent. These requirements include the permittee notifying the State of the insolvency and the State ordering the permittee to submit a plan for replacement performance security within 30 days after receipt of notice from the State. If the permittee provided full-cost performance security, the permittee has 90 days after receipt of notice to replace the performance security. If the permittee participated in the bond pool, the permittee has one year after receipt of notice to replace the performance security. For the one-year period following the permittee's receipt of notice, or until the permittee provides the replacement security, whichever comes first, money in the bond pool will be the permittee's replacement performance security in an amount not to exceed the State's reclamation cost estimate.

OSM Finding: We have determined that the provisions in this section are less effective than the Federal regulations at 30 CFR 800.16(e)(2). The procedures for replacing full-cost performance security in the event of insolvency conflict with the Federal regulations that require replacement bonds to be replaced within 90 days with no exception for alternative bonding systems. Although Ohio seeks to revise their program to allow the operators who rely on the bond pool to partially replace the bond within 90 days and the balance of the remaining bond being provided by the bond pool within one year, we must require a complete replacement of the bond within 90 days. If Ohio implements its program allowing the bond pool to supplement the replacement bond this action would place an undue risk on the solvency of their bond pool. Therefore, we do not approve that provision of ORC 1513.08(J) related to permittees who have provided performance security in accordance with ORC 1513.08(C)(2).

Subsection (K) (Liability Insurance for Water Treatment and Water Replacement)

In 2007, Ohio added subsection (K), which at that time provided that the permittee's responsibility for repairing material damage and replacement of water supply resulting from subsidence may be satisfied by liability insurance in lieu of the permittee's performance security if the liability insurance policy included the terms and conditions that specifically provide coverage for repairing material damage and replacement of water supply resulting from subsidence. In 2009, coinciding with the removal of a prohibition against using the bond pool fund to address material damage from subsidence, Ohio reorganized and revised this provision to only apply to permittees who have provided full-cost performance security. The revisions clarified that the permittee must select this option before mining and that it be a non-cancelable premium-paid liability insurance policy. Ohio also added subsection (2), which offers permittees the option to provide additional performance security to meet the permittee's obligation to repair material damage and replacement of water supply resulting from subsidence. Subsection (2) provides that a permittee may post additional performance security in the amount of the State's reclamation cost estimate to repair material damage and replace water supplies resulting from subsidence until the repair or replacement is completed. The provision also provides that if repair or replacement is completed or if compensation for structures that have been damaged by subsidence is provided by the permittee within 90 days of the occurrence of the subsidence, additional performance security is not required. The State may extend the 90-day period for a period not to exceed one year if the State determines that the permittee has demonstrated in writing that subsidence is not complete and that probable subsidence-related damage will occur, and, as a result, the completion of repairs of subsidence-related material damage to lands or protected structures or the replacement of water supply within 90 days of the occurrence of the subsidence would be unreasonable.

OSM Finding: We have determined that the provisions in this section are no less effective than the Federal regulations at 30 CFR 800.14(c), 800.60, and 817.121(c). Section 817.121 requires operators to adjust the bond amount for subsidence damage unless the operator repairs the subsidence damage within 90 days. This section also allows for an extension of the 90-day period up to a year if the operator demonstrates that not all reasonably anticipated damages have occurred yet. Sections 800.14 and 800.60 allow for liability insurance for subsidence damage so long as it meets certain requirements, like that it is maintained in full force during the life of the permit, any renewal period, and through the liability period necessary to complete all reclamation. Ohio's requirements are consistent with these Federal regulations. Therefore, we approve ORC 1513.08(K).

Subsection (L) (Excess Performance Security)

Ohio added this subsection to allow DMRM to authorize payment to the permittee of the amount of performance security that exceeds the estimated cost of reclamation, together with any interest or other earnings on the performance security.

OSM Finding: We have determined that the provision authorizing DMRM to refund, with interest, excess amounts of performance security is no less effective than the Federal regulations at 30 CFR 800.15, *Adjustment of amount.* Ohio is clarifying DMRM's ability to make these adjustments as allowed by the Federal regulations. Therefore, we approve ORC 1513.08(L).

Subsection (M) (Transition Provisions)

Immediately after Ohio passed HB 443, Ohio passed HB 119 to add subsection (M) to establish that permittees that held valid permits immediately prior to the effective date of HB 443 (*i.e.,* April 6, 2007) must update their performance securities in conformance with the new law.

OSM Finding: We have determined that this section does not have direct Federal counterparts but is not inconsistent with the Federal regulations. This section provided a reasonable length of time for existing operations to comply with the new requirements. We understand that no permittees currently operate under the prior version of Ohio's law, and therefore we approve ORC 1513.08(M) as a matter of course.

Subsection (N) (Applicant Relationships Defined)

Subsection (N) is a new section that defines certain terms related to ORC 1513.08. The term ''*affiliate of the applicant*'' means an entity that has a parent entity in common with the applicant. The term ''*owner and controller of the applicant*'' means a person that has any relationship with the applicant that gives the person authority to determine directly or indirectly the manner in which the applicant conducts coal mining operations.

OSM Finding: In ORC 1513.08, Ohio uses these terms only to refer to entities that may have held a permit within the previous five years such that the applicant may elect to participate in the bond pool. We have determined that the bond pool provisions in this section have no direct Federal counterparts, but Ohio's use and definition of these terms here are not inconsistent with the Federal definitions of owner or controller at 30 CFR 701.5, or our use of the term *affiliate* at 30 CFR 778.14(a). Therefore, we approve the addition of ORC 1513.08(N).

ORC 1513.081: Financial Assurance Operator Insolvency (Revised by HB 443, HB 163)

This is a new section that provides the lien provisions and conditions when an operator becomes insolvent. It includes a provision that the State must have a priority lien superior to all interested creditors against the assets of that operator for the amount of any reclamation that is required, including the cost of long-term water treatment and replacement of alternative water supplies, as a result of the operator's mining activities. This section describes the procedures DMRM will use in such cases. It also describes the conditions under which DMRM will issue a certificate of release, modify the amount of the lien, and authorize a closing agent to hold a certificate of release in escrow for a period not to exceed 180 days for the purpose of facilitating the transfer of unreclaimed mine land. This section also adds the provision that all money from the collection of liens will be deposited in the State treasury to the credit of the Reclamation Forfeiture Fund. In 2011, Ohio revised this provision to replace the word ''operator'' with ''permittee'' and added language in several places to account for costs related to long-term water treatment and long-term alternative water supplies.

OSM Finding: The Federal regulations at 30 CFR 800.50(d) explain that if the estimated amount of bond forfeited by an operator is insufficient to pay for the full cost of reclamation, then the operator is liable for the remaining costs, and the regulatory authority may authorize the reclamation and recover those costs from the operator. Therefore, we have determined that the priority lien provision is consistent with the Federal regulations at 30 CFR 800.50(d) because it provides the State with the authority to recover authorized reclamation costs by placing liens against an operator who becomes insolvent. This prioritization will ensure that assets are available to the State to complete reclamation of the site as established in the approved permit, and so we approve ORC 1513.081.

ORC 1513.10: Reclamation Fee Fund (Permit Fee Refunds) (Repealed by HB 443)

Ohio repealed this section, which created the Reclamation Fee Fund and provided conditions under which the operator would be entitled to a permit fee refund.

OSM Finding: We have determined that the repeal of this provision does not render the Ohio approved program inconsistent with SMCRA or the Federal regulations, neither of which includes a counterpart to the repealed provision. ORC 1513.10 has become unnecessary because Ohio eliminated acreage permit fees entirely, which we approved above in our discussion of revisions to ORC 1513.07(B)(1). Acreage fees were removed in favor of changes to the severance tax on coal production. Therefore, we approve the repeal of ORC 1513.10.

ORC 1513.16: Performance Standards (Treatment Trust Provisions and Bond Release) (Revised by HB 443, HB 163) and OAC 1501:13–1–02: Definitions (Alternative Financial Security)

Ohio revised this provision, which relates to general performance standards that apply to all coal mining and reclamation operations, to replace the term *bond* with the term *performance security* consistent with the revision to ORC 1513.01(W), discussed above. Ohio also added subsection (F)(8) to authorize DMRM, in certain circumstances, to accept an *alternative financial security* sufficient to fund the treatment of mine drainage or provide alternative water supplies for which DMRM determines the permittee is responsible after reclamation is completed under the terms of the permit. Subsection (F)(8) requires that the amount must be determined by DMRM before the release of the remaining performance security under ORC 1513.16(F)(3)(c) and must be equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment, or necessary to provide and maintain an alternative water supply, as applicable. The provision specifies that the alternative financial security must include a contract, trust, or other agreement or mechanism legally enforceable specifically for those purposes. Through HB 163, Ohio further revised this provision to allow operators the option of funding an alternative financial security over time, up to five years, with reliance for the balance on guarantees or other collateral until the alternative financial security is fully funded. If permittee is bonded under the bond pool, the permittee may rely on the Reclamation Forfeiture Fund until the alternative financial security is fully funded, but the permittee must pay a fee of 7.5 percent of the average balance of the alternative financial security that is being provided by reliance on the Reclamation Forfeiture Fund over the previous six months. That fee is credited to the bond pool. Ohio also included a provision requiring DMRM to adopt regulations necessary for the administration of this subsection. Ohio also added subsection (F)(9) to add that the final release of the performance security terminates the jurisdiction of DMRM over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. It specifies that DMRM will reassert jurisdiction over such a site if the release was based on fraud, collusion, or misrepresentation, and that adversely affected persons may appeal such a determination to the Reclamation Commission. Ohio has made subsequent revisions, adding subsection (A)(25) in 2015 (which is part of a separate state program amendment docketed at SATS No. OH–256–FOR), and eliminating the requirement for a stenographic record in 2023. We do not address those revisions here.

In 2018, Ohio revised its regulations to add the term *alternative financial security* to its list of definitions at OAC 1501:13–1–02(G), which it defined as a trust fund, standby trust fund, or other similar agreement or mechanism for the benefit of the state, enforceable under law and approved by DMRM that assures sufficient funds are available and devoted solely to the purpose of providing and maintaining long-term water treatment or a long-term water supply, as DMRM requires under ORC 1513.16(F)(8).

OSM Finding: Section 509(a) of SMCRA, 30 U.S.C. 1259(a), and its implementing regulations at 30 CFR 800.11 and 800.14, require that a permittee provide bonds ensuring the faithful performance of all the requirements of SMCRA, the regulatory program, the permit and the reclamation plan, which includes the long-term treatment of mine drainage or provision of alternative water supplies made necessary by the operation. Ohio's addition here requires an operator found responsible for water treatment or an alternative water supply after reclamation is completed to provide an *alternative financial security.* ORC 1513.16(F)(8) does not define *alternative financial security,* but it does describe it, as above, specifying that it include ''a contract, trust, or other agreement or mechanism'' enforceable under the law for that purpose. Ohio then defined *alternative financial security* in its regulations in similar terms. Ohio's regulations also define the term *trust fund* at OAC 1501:13–1–02(WWWWWW), and, as explained above, place conditions on trust funds under OAC 1501:13–7–03(B)(10). As we note in our finding on the definition of performance security above, trust funds are not explicitly authorized as a bonding instrument pursuant to 30 CFR 800.12. However, we have previously found that trust funds and equivalent financial arrangements are a prudent approach to providing financial assurance for long-term treatment of pollutional discharges and providing alternative water supply, and have approved trust funds as a form of collateral bond in Pennsylvania, see 70 FR 25472 (May 13, 2005) and 75 FR 48526 (August 10, 2010), and as an alternative bonding system under section 509(c) of SMCRA and 30 CFR 800.11(e) in Pennsylvania, see id., West Virginia, see 89 FR 19262 (March 18, 2024), and under the Federal program in Tennessee, see 30 CFR 942.800(c); 72 FR 9616 (March 2, 2007).

In those three States, trust funds are conditioned as Ohio has conditioned them under OAC 1501:13–7–03, ensuring, for instance that the trust agreement be in a form approved by the regulatory authority and contain all terms and conditions the regulatory authority requires. We address the remaining conditions in our discussion of OAC 1501:13–7–03 below, but we note it here because, while we approve Ohio's *alternative financial security* as it appears in ORC 1513.16(F)(8) and defined at OAC 1501:13–1–02(G), we do so only to the extent it includes trust funds as defined at OAC 1501:13–1–02(WWWWWW) and conditioned by OAC 1501:13–7–03. If Ohio decides to pursue additional ''agreements or mechanisms'' (such as annuities so authorized in the three States mentioned), it will need to pursue an additional program amendment for us to evaluate the conditions proposed for those agreements or mechanisms. We also approve Ohio's provision authorizing the permittee to fund the alternative financial security within five years, which is consistent with our prior approvals acknowledging that they may be funded over a reasonable time. Regarding the amount of the alternative financial security, we note that our program in Tennessee and our recent approval in West Virginia stress that the amount of a trust for long-term water treatment include funding for reclamation of the treatment facility and supporting areas when they are no longer necessary in order to restore the area to the approved postmining land use. While Pennsylvania's program is not as explicit, it generally provides that the amount is determined as necessary to meet the bonding requirements established by the regulatory authority for a permittee and that it guarantees money for water treatment or reclamation or both. See 25 Pa. Code 86.158(f)(1) and (3). Accordingly, we approve ORC 1513.16(F)(8) and OAC 1501:13–1–02(G) with the understanding that, although they refer to amounts for providing and maintaining long-term water treatment, they are subject to the condition in the definition of *trust fund* at OAC 1501:13–1–02(WWWWWW) that funds are available to comply with Ohio's approved program and would necessarily include reclamation of the treatment facility after all pollutional discharges are eliminated or otherwise cease to exist.

We also find that, even though Ohio had not submitted, and we had not published, notice of Ohio's definition of *alternative financial security* at OAC 1501:13–1–02(G) before making this finding, notice and public procedure under section 553 of the APA for removal of these references in ORC 1513.18 are impracticable, unnecessary, and contrary to public interest. See 5 U.S.C. 553(b)(B). Notification is unnecessary because Ohio's definition is not substantively different than its description of alternative financial security in the text of ORC 1513.16(F)(8), and we limit our approval to alternative financial security in the form of trust funds, which Ohio had submitted and we approved above. Finally, we also find that the amendment at ORC 1513.16(F)(9), pertaining to termination and reassertion of jurisdiction, is effectively the same as the Federal regulations at 30 CFR 700.11(d), which authorizes the regulatory authority to terminate jurisdiction following a final decision to fully release the relevant performance bond and to reassert jurisdiction in cases of fraud, collusion, or misrepresentation of materials facts. Further, it is our understanding that Ohio does not interpret this provision as terminating jurisdiction at sites relying on alternative financial security under subsection (F)(8), for which the original performance security has been released pursuant to subsection (F)(3)(c). We find this interpretation is supported by Ohio's definitions of *alternative financial security* at OAC 1501:13–1–02(G), and *trust fund* at OAC 1501:13–1–02(WWWWWW), and the conditions for trust funds under OAC 1501:13–7–03(B)(10), which together establish that *alternative financial security* still means a form of collateral bond that constitutes performance security, only the proper release of which would terminate jurisdiction under ORC 1513.16(F)(9). Therefore, Ohio's provision is no less effective than the Federal regulation, and we approve it.

ORC 1513.171: Severance Tax Credit Certificate (HB 443)

This is a new section that provides procedures for a permittee to apply to perform reclamation on land or water resources not within their own permit area that had been affected by past coal mining for which the performance security was forfeited. Following approval of the application and successful reclamation, DMRM issues to the permittee a reclamation tax credit certificate that the permittee may claim under ORC 5749.11 against the severance tax imposed under ORC 5749.02. This provision also provides that DMRM will adopt rules to establish procedures for determining the amount; when DMRM may obtain consent of the owners of land or water resources to allow reclamation work; and delivery of notice to the owners of land or water resources on which the reclamation work is to be performed.

OSM Finding: We have determined that a tax credit for reclamation of areas adversely affected by coal mining, for which the permittee conducting the reclamation and applying for the credit is not responsible, has no Federal counterpart but is not inconsistent with SMCRA or its Federal regulations. Ohio has added this provision to its regulatory program as an incentive for permittees to perform reclamation work that would otherwise be conducted, at greater expense, by the State through the or through the bond pool or other relevant State funding. The cost-savings from private reclamation of these sites benefits the overall solvency of the bond pool. Therefore, we approve ORC 1513.171.

ORC 1513.18: Reclamation Forfeiture Fund (Revised by HB 443, HB 119, SB 73, HB 163)

Ohio made numerous revisions to this section, which establishes the Reclamation Forfeiture Fund to hold the money derived from the forfeiture of performance security and hold additional funds derived from other sources to support Ohio's bond pool. Ohio revised subsection (B), which establishes the sources of funds, to eliminate transfers from the unreclaimed lands fund (2007) and the coal mining and reclamation reserve fund (2017); and to add all funds collected from liens under ORC 1513.081 (2007), the fee levied pursuant to ORC 1513.16(F)(8)(c) collected for sites for which the permittee elects to incrementally fund alternative financial security with reliance on the bond pool for the balance (2011), and fines collected for violations of Ohio's coal mining laws and obstructing official duties (2007). Ohio also revised the proviso in subsection (B) relating to disbursements, clarifying that disbursements must occur in accordance with subsection (D), eliminating the statement that the bond pool's priority was ensuring sufficient money for coal reclamation (2007), and later, due to drafting error, eliminating the corresponding provision authorizing the funding of reclamation of non-coal sites (2009). Ohio also added a provision that authorizes use of the bond pool to pay necessary administrative costs of the RFFAB.

Ohio revised subsection (C), which relates to contracts by DMRM to perform reclamation work, to add that, without advertising for bids, DMRM may contract with a contractor hired by a trustee if the performance security is held in trust. In 2011, Ohio further revised this list to include a contractor hired by the trust administrator of an alternative financial security provided under ORC 1513.16(F)(8) to provide long-term water treatment or a long-term alternative water supply at areas for which the permittee defaulted or has not fully funded an alternative financial security.

Ohio redrafted subsection (D), related to expenditures from the bond pool for reclamation, clarifying in paragraph (1) that the money from forfeited performance security applicable to an area of land and credited to the Reclamation Forfeiture Fund will pay for the cost of completing reclamation of that land to the standards established by Ohio's coal mining statute and regulations. Ohio created paragraphs (2) and (3) to distinguish between sites with conventional (full-cost) performance security and those that rely on the bond pool, and paragraph (4) to enumerate prohibition on uses of the bond pool. Ohio revised each of these paragraphs in 2011 to recognize alternative financial security created under ORC 1513.16, discussed above. Paragraph (2) specifies that any forfeited conventional performance security provided under ORC 1513.08(C)(1) or alternative financial security will be used to complete reclamation that the operator failed to perform under their permit. Paragraph (3) provides that, for permits covered by the bond pool, DMRM will first use forfeited performance security provided under ORC 1513.08(C)(2) (the $2500/acre amount) or alternative financial security, then, if that amount is insufficient, DMRM must notify the Board. Ohio also specifies that DMRM may expend money from the bond pool derived from the severance tax under ORC 5749.02 or the fee levied by ORC 1513.16(F)(8)(c), but not in an amount that exceeds the difference between the performance security and the estimated cost of reclamation determined under ORC 1513.08. Ohio also added paragraph (5) to limit expenditure for funding alternative financial security to the remaining balance not yet funded by the operator by increment. Following several revisions between 2007 and 2011, paragraph (4) generally prohibits use of the bond pool for long-term water treatment, making a limited exception for water treatment funded by alternative financial security pursuant to paragraph (5), and categorically prohibits use of the bond pool to supplement insufficient conventional performance security. Ohio made no other revisions to subsection (E) other than those to account for water treatment and alternative financial security. In 2007, Ohio added subsection (H), which requires that all investment earnings of the Reclamation Forfeiture Fund shall be credited to the bond pool and shall be used only for the reclamation of land for which the performance security was provided.

OSM Finding: We have determined that the provisions of this section do not have any direct counterparts in SMCRA or the Federal regulations. The revisions to the sources of funding for the bond pool are not inconsistent with section 509 of SMCRA or 30 CFR 800.11(e)(1), which require that an ABS assures that the regulatory authority have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Ohio has not indicated in any of its actuarial reports that it has ever relied on or even used transfers from the unreclaimed lands fund or the coal mining administration and reclamation reserve fund (repealed 2017) since the creation of the severance tax at ORC 5749.02 in 2007. We also find that even though Ohio had not submitted, and we had not published notice of, the repeal of ORC 1513.181 before making this finding, notice and public procedure under section 553 of the APA for removal of these references in ORC 1513.18 are impracticable, unnecessary, and contrary to public interest. *See* 5 U.S.C. 553(b)(B). Notification is unnecessary because the change occurred now over eight years ago, and there has neither been any identifiable change to the Reclamation Forfeiture Fund nor public interest in the change, and notification of this repeal now would further delay Ohio's remaining provisions, which have been pending resolution in their current form since 2012, including those that directly support the bond pool. Additionally, Ohio's revisions to the severance tax at ORC 5749.02, discussed more below, and the elimination of the authorization to use funds for the reclamation of non-coal sites contributes to the solvency of the bond pool. Ohio's authorization to use the bond pool for necessary administrative costs of the RFFAB is also a reasonable use of the Reclamation Forfeiture Fund considering the RFFAB's role in maintaining bond pool solvency. Next, Ohio's revisions to subsection (C) to authorize sole-source contracts for the reclamation with contractors hired by trustees is consistent with the existing list that includes contractors hired by sureties. Most of Ohio's revisions to subsection (D) simply delineate between use of funds for sites with conventional performance security and those that rely on the bond pool, which we approve as integral to maintaining the solvency of the bond pool. We further approve revisions to account for Ohio's creation of alternative financial security, as those instruments are as accountable for uncompleted work to meet the requirements of the Ohio program as conventional performance security and their function in forfeiture is the same. Regarding Ohio's proviso at subsection (D)(3) that DMRM cannot expend money in the bond pool that exceeds the difference between the $2,500/acre performance security and the estimated cost of reclamation determine by DMRM under ORC 1513.08(B) and (E), we note that this provision relies on Ohio's regulations at OAC 1501:13–7–02(E)(3) (allowing DMRM to revise the estimated cost of reclamation at any time) and OAC 1501:13–7–06(F)(2) (allowing DMRM to revise a reclamation plan after forfeiture) and OAC 1501:13–4–06(E)(7) (allowing DMRM to revise the cost of reclamation upon any permit revision). We will monitor through our regular oversight function to ensure Ohio is appropriately revising the estimated cost of reclamation accordingly so that the bond pool is obligated to all relevant reclamation liabilities. Regarding Ohio's prohibition on using the bond pool for the long-term treatment of water after reclamation is completed, we note that this prohibition would be problematic given the requirement at 30 CFR 800.11(e) but for Ohio's new requirement to provide alternative financial security under ORC 1513.16. As we have noted before, the requirement to have available sufficient money to complete the reclamation plan includes the funding for long-term water treatment should it be necessary. Therefore, we approve this provision so long as Ohio maintains the requirement that an operator provide alternative financial security as approved above. Similarly, we approve Ohio's proposal to allow reliance on the bond pool for the remaining balance of an incrementally funded alternative financial security in compliance with subsection (D)(5). Finally, crediting the investment earnings back into the bond pool, as directed by subsection (H), is a prudent measure to help ensure bond pool solvency. Overall, as evidenced through the actuarial reports we discuss below, Ohio's revisions to the mechanics of the Reclamation Forfeiture Fund are consistent with 30 CFR 800.11(e)(1), and we approve ORC 1513.18 in its existing form.

ORC 1513.181: Coal Mining Administration and Reclamation Reserve Fund (Transferred Funds) (Revised by HB 443, Later Repealed)

Subsequent to Ohio's submission of this amendment, Ohio repealed this section through House Bill 49 (approved June 30, 2017), 2017 Ohio Laws 14, to consolidate various funds that DMRM used to support the administration and enforcement of various laws under its purview, including the coal mining administration and reclamation reserve fund which had been used for the administration and enforcement of ORC Chapter 1513. *See* Ohio Legislative Service Commission, Final Analysis of Am. Sub. H.B. 49, pp. 479–480 (corrected version). In addition to funding administration and enforcement, ORC 1513.181 also allowed the transfer of up to one million dollars annually to the Reclamation Forfeiture Fund created in ORC 1513.18, in support of the solvency of Ohio's bond pool. Before its repeal in 2017, the 2007 revisions from HB 443 had already redirected various fines formerly deposited in the coal mining administration and reclamation reserve fund to the Reclamation Forfeiture Fund. The additional revisions from HB 443, eliminating certain transfers out of the coal mining administration and reclamation reserve fund for noncoal and abandoned coal land reclamation, are discussed generally below in our analysis of ORC 1513.30.

OSM Finding: The Federal regulations at 30 CFR 732.17(b)(6) require that a State notify us of any ''[s]ignificant changes in funding or budgeting relative to the approved program.'' We do not consider a State's consolidation or rearrangement of statutorily created funds or accounts to, by itself, constitute a significant change in funding or budgeting absent a significant change in the amount of funds allocated to the State program relative to its costs. Here, the Ohio's funds that were held in the coal mining administration and reclamation reserve fund and used to support the Ohio's bond pool are now held in the Reclamation Forfeiture Fund created under ORC 1513.18, and those used to support the administration and enforcement of Ohio's coal regulatory program are held in the Mining Regulation and Safety Fund under ORC 1513.30. Since the repeal of ORC 1513.181 is offset by related revisions to ORC 1513.18 and ORC 1513.30, we find that it does not affect the implementation, administration or enforcement of the approved State program and we approve it. We find that even though Ohio had not submitted, and we had not published, notice of this repeal before making this finding, notice and public procedure under section 553 of the APA for this provision is impracticable, unnecessary, and contrary to public interest. See 5 U.S.C. 553(b)(B). Notification is unnecessary because the change occurred now over eight years ago, with no identifiable change in program funding or public interest in the change, and notification of this repeal now would further delay Ohio's remaining provisions which have been pending resolution in their current form since 2012.

ORC 1513.182: Reclamation Forfeiture Fund Advisory Board (Created by HB 443)

This is a new section that provides for the creation of the Reclamation Forfeiture Fund Advisory Board (RFFAB or Board). It includes provisions for the composition of the Board, term limits for Board members, compensation of Board members, election of officers, meeting frequency, establishment of Board procedures, and responsibilities of the Board. The responsibilities of the Board include: reviewing deposits into and expenditures from the Reclamation Forfeiture Fund; procuring periodic actuarial studies; adopting rules to adjust the rate of tax levied; providing a forum for discussion of issues related to the Reclamation Forfeiture Fund and the performance security that is required; submitting a biennial report to the Governor that describes the financial status of the Reclamation Forfeiture Fund and the adequacy of the amount of money in the bond pool to accomplish its purposes; and, recommending to the Governor, if necessary, alternative methods of providing money for or using money in the Reclamation Forfeiture Fund. The Board will also evaluate any rules, procedures, and methods for estimating the cost of reclamation for purposes of determining the amount of performance security that is required; the collection of forfeited performance security; payments to the Reclamation Forfeiture Fund; reclamation of sites for which operators have forfeited the performance security; and the compliance of operators with their reclamation plans.

OSM Finding: The Federal regulations at 30 CFR 800.11(e)(1) require that an ABS assures that the regulatory authority has sufficient money to complete the reclamation plan for any areas which may be in default at any time. By establishing this advisory board, Ohio is creating a mechanism to continuously review the status of Ohio's bond pool and provide ongoing recommendations to the Governor and the legislature on what adjustments need to be made to the bond pool to ensure its solvency, which should help Ohio comply with 30 CFR 800.11(e). However, we cannot approve subsection (E)(3), which authorizes the RFFAB to adopt rules to adjust the rate of the tax levied under ORC 5749.02. Section 517(g) of SMCRA, 30 U.S.C. 1267, and its implementing regulations at 30 CFR part 705, generally prohibit State employees performing any function or duty under SMCRA from having a direct or indirect financial interest in any coal mining operation. The definition of *employee* at 30 CFR 705.5 excludes members of advisory boards established in accordance with State law to represent multiple interests, which allows them to have and maintain an otherwise prohibited financial interest in any coal mining operation. However, those members must still file a statement of financial interests pursuant to 30 CFR 705.11(a) and recuse themselves from proceedings that may affect their direct or indirect financial interests pursuant to 30 CFR 705.4(d). We adopted that balance for multi-interest boards to recognize the delicate political judgments and compromises made by States in creating these boards, many before the enactment of SMCRA. *See* 51 FR 37118, 37121 (Oct. 17, 1986). In that same notice, we acknowledged that a State board's rulemaking functions may have a widespread effect on the financial interest of coal companies and found that 30 CFR 704.5(d) was sufficiently descriptive to enable all affected persons to evaluate whether recusal is required by a particular member of a rulemaking board. *Id.* at 37119. We find here that the authority to adjust the bond pool tax on coal operators may affect a RFFAB member's direct or indirect financial interest, and that Ohio does not require recusal for RFFAB members under OAC 1501:13–1–03 (Restrictions on financial interest of employees). Therefore, we do not approve that rulemaking power under subsection (E)(3). Because the other powers of the RFFAB are only either advisory or ministerial in nature, the RFFAB members would then be purely advisory and not considered decisionmakers subject to the prohibition under section 517(g) of SMCRA. *See id.* at 37121; *see also* 66 FR 67446 (Dec. 28, 2001) (approving similar bond pool advisory board in West Virginia). Therefore, we approve the remainder of ORC 1513.182.

ORC 5749.02: Imposing Tax on Severance of Natural Resources (Revised by HB 443, HB 119, SB 73)

Ohio revised subsection (A)(1) to increase the coal severance tax for providing revenue to administer the state's coal mining and reclamation regulatory program from seven cents to ten cents per ton. Ohio then recently reduced this amount down to eight cents per ton. *See* Ohio House Bill 96 (approved June 30, 2025), 2025 Ohio Laws 14. This action does not affect the severance tax rates paid by operators in support of the bond pool. The 2009 amendment from HB 443 also added a provision at subsection (A)(8) imposing an additional severance tax to ensure funding for the bond pool, stating that if the operator uses the bond pool for performance security, then the operator must pay an additional 14 cents per ton into the Reclamation Forfeiture Fund, in addition to the $2,500/acre flat rate bond required by ORC 1513.18(C)(2). The new provision also establishes the conditions and applicable dates for adjustment of this tax, between 12 cents per ton and 16 cents per ton, that is directly related to the bond pool balance. In addition, it provides the conditions that must exist for determining that forfeiture liability no longer exists, and the severance tax can be discontinued for a period if the bond pool is solvent. It further provides that an additional 1.2 cents per ton is required for coal mined by surface mining methods and credited to the Mining Regulation and Safety Fund under ORC 1513.30. Ohio made additional revisions in 2013 and 2017 to add introductory language, make technical revisions like renumbering, and account for the 2017 replacement of the Coal Mining Administration and Reclamation Reserve Fund with the Mining Regulation and Safety Fund. See Ohio House Bill 59 (approved June 30, 2013), 2013 Ohio Laws 25; and Ohio House Bill 49 (approved June 30, 2017), 2017 Ohio Laws 14.

OSM Finding: We have determined that the provisions in this section have no direct Federal counterparts, but the revisions to subsection (A)(1), which generally helps fund Ohio's regulatory program and does not constitute ''significant changes in funding or budgeting relative to the approved program'' that would require notification under 30 CFR 732.17(b)(6), as we discuss in further detail in our analysis of ORC 1513.30, below, and are not inconsistent with SMCRA or the Federal regulations at 30 CFR 732.15(d), requiring sufficient funding for administration and enforcement of the regulatory program. Regarding the creation of the bond pool tax at subsection (A)(8) and subsequent minor revisions, we find that it is no less effective than 30 CFR 800.11(e)(1), which requires that an alternative bonding system assure that the regulatory authority has available sufficient money to complete the reclamation plan for any areas which may be in default at any time. However, for the reasons explained in our analysis of ORC 1513.182, above, we cannot approve the language in subsection (A)(8) that allows the RFFAB to adjust the rate by rulemaking. Adding a tax for bond pool participants will improve Ohio's ability to continue meeting these requirements, particularly strengthening the solvency of the Reclamation Forfeiture Fund. Additionally, we continually monitor Ohio's compliance with these requirements through our regular oversight evaluations. Therefore, we approve the changes to ORC 5749.02.

ORC 5749.11: Nonrefundable Severance Tax Credit (HB 443)

This is a new section that provides for a nonrefundable credit against the severance taxes imposed on coal production under ORC 5749.02 in the amount listed on a reclamation tax credit certificate issued by DMRM under ORC 1513.171 for reclaiming land that is not within the applicant's permit area and that has been adversely affected by previous coal mining for which the performance security was forfeited. This provision also describes how a permittee claims the credit against its taxes and requires the permittee to retain the certificate for a certain length of time and make it available for inspection by the tax commissioner.

OSM Finding: Consistent with our approval of ORC 1513.171, we find that this provision has no direct Federal counterpart but is not inconsistent with SMCRA or its Federal regulations. ORC 5749.11 itself relates only to how the tax credit certificate gets applied within Ohio's tax code and does not affect Ohio's coal regulatory program. Therefore, we approve this provision and incorporate our discussion above regarding the tax credit certificate under ORC 1513.171.

C. Bond-Related Regulatory Provisions

Ohio made regulatory changes necessitated by the statutory changes described above that affected permit requirements involving financial assurance and the bond pool funding sources. These regulatory changes include, among other things, adding trust funds as an acceptable form of performance security (financial assurance), allowing an option for an operator to post a full-cost performance security and adjusting severance tax rates. We describe these statutory changes at OAC Chapter 1501:13, *Division of Mineral Resources Management, Coal.*

OAC 1501:13–1–02: Definitions (Transfer, Assignment, or Sale of Permit Rights)

In 2019, Ohio expanded the definition of *transfer, assignment, or sale of permit rights* at subsection (VVVVVV) to also include a change in the ownership and operational control of a permittee to a person who has not held a permit issued under Chapter 1513 of the Ohio Revised Code for a period of not less than five years where the existence and name of the permittee remain the same.

In its submission, Ohio explained its rationale for making the change to this definition, stating that the change is intended to prevent a person who is not eligible to participate in the bond pool (by not having held a coal mining permit in the last five years) from gaining access to the bond pool through a change of ownership or control that does not change the existence and name of the permittee.

OSM Finding: We find this revision to be consistent with our analysis and approval of ORC 1513.08(C). We incorporate those findings here and approve this revision to the term *transfer, assignment, or sale of permit rights* at OAC 1501:13–1–02(VVVVVV).

OAC 1501:13–4–01: General Contents Requirements for Permit Applications

Ohio revised subsection (A)(2) of this rule to delete the word ''significant'' from before the word ''revision'' to clarify that DMRM will review, and approve or disapprove, applications for all revisions, not merely significant revisions. Ohio also deleted the provision formerly at subsection (E) that required each applicant to submit a permit application fee in the amount of seventy-five dollars per acre estimated in the application. Ohio has replaced the permit fee with an additional severance tax on coal as noted in our finding for ORC 1513.07.

OSM Finding: Ohio's deletion of the word ''significant'' from subsection (A)(2) makes this provision consistent with 30 CFR 774.13, *Permit revisions,* which requires review of all permit revisions, noting specific additional requirements and guidelines for significant revisions. Ohio deleted the permit application and renewal fees in this rule consistent with the statutory revision at ORC 1513.07(B)(1), which we discuss above and approve. Therefore, we approve these revisions to OAC 1501:13–4–01.

OAC 1501:13–4–06: Permit Applications, Revisions, and Renewals, and Transfers, Assignments, and Sales of Permit Rights

In 2009, Ohio revised subsection (E) to add the requirement that DMRM reviews all permit revisions to determine if an adjustment of the estimated cost of reclamation will be required. This rule was also revised regarding transfer, assignment, or sale of permit rights by indicating that any person seeking to succeed by transfer, assignment, or sale must obtain the appropriate performance security coverage for the permitted operation. The successor can fulfill this requirement by either obtaining transfer of the original performance security coverage of the original permittee, provided that the successor meets the eligibility requirements for obtaining performance security together with reliance on the bond pool, or by providing sufficient performance security under the full-cost option.

OSM Finding: We have determined the provision requiring DMRM to review permit revisions for potential adjustments to the reclamation cost is no less effective than the Federal regulations at 30 CFR 800.15(d). Ohio's revision clarifies that this determination is DMRM's responsibility. We have determined the provision about permit succession and performance security is no less effective than the Federal regulations at 30 CFR 774.17(d). Ohio includes the requirement that exists under the Federal regulations and includes a proviso to account for the eligibility requirements that control participation in its bond pool. Therefore, we approve the revisions to OAC 1501:13–4–06(E)(7) and 1501:13–4–06(H).

OAC 1501:13–4–12: Requirements for Permits for Special Categories of Mining

For coal preparation plants or support facilities not located within the permit area of a specified mine, Ohio revised subsection (I)(2) to add the requirement that each application for a permit must include the information required for the proposed permit area in sufficient detail to determine the estimated cost of reclamation in case the reclamation must be performed by the State due to forfeiture of the performance security by the permittee. It adds that the operational detail must be sufficient to determine the greatest potential reclamation cost liability to the State and that the applicant must include any other operational detail required that may affect the cost of reclamation.

OSM Finding: We have determined that this revision is no less effective than the Federal regulations at 30 CFR 785.21(b), which requires an operation and reclamation plan with descriptions, maps, cross sections of the construction, operation, maintenance, and removal of the preparation and support facilities, and 30 CFR 827.11, which requires these facilities be bonded consistent with 30 CFR subchapter J. The revision is also consistent with Ohio's revision to ORC 1513.07(C), discussed above, and we incorporate those findings about the estimated cost of reclamation here. Therefore, we approve the revisions to OAC 1501:13–4–12.

OAC 1501:13–7–01: General Requirements for Providing Performance Security for Coal Mining and Reclamation Operations

Ohio revised this section to conform to the revisions in its statute at ORC 1513.08, clarifying provisions for those permittees opting to provide a bond that relies on the Reclamation Forfeiture Fund and provide new rules for those permittees opting to provide performance security without reliance on the bond pool (conventional full-cost performance security). Ohio revised subsection (A)(1) to bifurcate the general requirements for each option and allow applicants filing full-cost performance security to do so for each incremental mining area, a term introduced and discussed above at ORC 1501:13–1–02(QQQ) and incorporated throughout these revisions. Ohio also added subsection (A)(1)(c) to prohibit permittees who have elected to provide full-cost performance security from changing to the bond pool after coal extraction has begun. Ohio bifurcated subsection (A)(6), relating to providing performance security for approved increments, which now requires applicants who provide full-cost performance security to submit maps at permit application showing the boundaries of each incremental mining unit within the proposed permit area, instead of the estimate number of acres to affected in the first permit year, required of permits relying on the bond pool.

Ohio also revised subsections (B), *Estimated cost of reclamation,* (C), *Method of providing performance security,* and (D), *Release of excess security,* to reflect the statutory revisions at ORC 1513.08(B), (C), and (F). Provisions of this regulation not specifically appearing in the statute include subsection (B)(2), which requires DMRM to provide the applicant with a copy of the estimated cost along with the unit costs used to support the estimate, and a clause in subsection (C) specifying that the method of providing performance security shall apply to the entire permit. Finally, Ohio revised subsection (E), *Responsibilities of the chief,* to add DMRM's new obligation to estimate cost, and revise its responsibility to adjust the amount to incorporate the conditions from OAC 1501:13–7–02(E) rather than simply occurring as land acreages in the permit area change.

OSM Finding: First, we incorporate here our findings about Ohio's creation of a conventional, full-cost performance security and revisions to its alternative bonding system at ORC 1513.08, discussed above. Concerning the provisions specific to incremental mining units, we find that Ohio has included all the relevant requirements from the Federal regulations at 30 CFR 800.11(b)–(d), including the requirement to file appropriate maps under subsection (b)(3). The provision prohibiting permittees who choose full-cost performance securities from changing to reliance on the bond pool does not have a direct counterpart in the Federal regulations but is consistent with the requirement at 30 CFR 800.11(e)(1) that the ABS ensures that the regulatory authority will have sufficient money available to complete the reclamation. Because the solvency of Ohio's bond pool depends in part on its tax on coal production, excluding operators who have already begun to produce their coal without paying the tax ensures that all operators participating in the pool contribute to its solvency for the life of their operation (and ensures fairness among those participants). We find that Ohio's provisions at subsections (B), (C), and (D) mirror, with some minor reorganizing and revised cross-references, the statutory revisions at ORC 1513.08(B), (C), and (F), that we approve. Concerning the requirement that DMRM provide the applicant with a copy of the cost estimate with supporting material, we find this requirement has no Federal counterpart, but it supplements the required notice and is well within Ohio's discretion to require. Finally, we find that Ohio's proviso that the applicant's chosen method of performance security (bond pool or full-cost) applies to the entire permit area is already implied by the language of ORC 1513.08. For these reasons, and the reasons mentioned above in our approval of ORC 1513.08, we approve the revisions to OAC 1501:13–7–01.

OAC 1501:13–7–02: Amount and Duration of Performance Security

Ohio revised subsection (A) and created subsection (B) to distinguish the amount of performance security for those permittees electing to provide performance security with reliance on the Reclamation Forfeiture Fund from those permittees electing to provide performance security without reliance on the bond pool (full-cost performance security). In subsection (A), Ohio also eliminated effective dates that had become moot and authorized applicants relying on the bond pool to fulfil their responsibility to repair material damage and replace water supplies resulting from subsidence by providing liability insurance so long as the policy contains terms and conditions that specifically provide for such coverage. Ohio created subsection (B) to reiterate that applicants providing full-cost performance security do so in the amount of the estimated cost of reclamation under OAC 1501:13–7–01 for the entire permit or increment thereof, and added the provisions from ORC 1513.08(K) that, for subsidence damage, applicants may either purchase an insurance policy prior to mining or provide additional performance security in the amount of the estimated cost to DMRM to repair the damage. Finally, Ohio added subsection (E), to incorporate the provisions of ORC 1513.08(E) and (F), regarding the adjustment of performance security. Subsection (E) provides that DMRM may make necessary adjustment at any time, but includes several minimum events that will trigger a review to determine if an adjustment is necessary, such as the filing of annual reports and maps, applications for permit revisions and permit renewals, etc.

OSM Finding: We find that Ohio's revisions to this section are substantively identical to those we approve above at ORC 1513.08(C) (creating the two methods of providing performance security), (K) (authorizing an applicant to provide insurance for subsidence damage), and (E) and (F) (relating to adjustments of performance security). We incorporate our findings for those provisions here. Regarding the adjustment of bond, we note that 30 CFR 800.15(a) provides a great degree of discretion to the regulatory authority to decide when a review for an adjustment is appropriate. For these reasons, we approve the revisions to OAC 1501:13–7–02.

OAC 1501:13–7–03: Form, Conditions, and Terms of Performance Security

Ohio revised subsection (A) to add trust funds to the list of acceptable forms of performance security. Ohio made several revisions to subsection (B), which enumerates terms and conditions for performance security generally, as well as terms and conditions for specific types of performance security. Ohio revised subsection (B)(1) to require the amount of the performance security to reflect the chosen method of providing performance security (bond pool or full cost), as provided in OAC 1501:13–7–02, merged subsections (B)(2) and (B)(3), and added a new proviso at subsection (B)(3) requiring that the name of the permittee on the performance security be identical to the name of the permittee on the permit. For surety bonds under subsection (B)(5), Ohio added that the corporate surety must be licensed to do business in Ohio. For collateral bonds under subsection (B)(6) (which excludes letters of credit), Ohio added that the bank holding a cash deposit or negotiable certificates of deposit must be licensed and operating in Ohio, that certificates of deposit be issued with a maturity date of not less than twelve months, and that the permittee must notify DMRM and submit a revised form if there is a change in account numbers when a certificate of deposit is being closed and rolled over into a new certificate of deposit.

Regarding letters of credit under subsection (B)(7), Ohio added that they must be automatically renewable and for a term not less than one year. Ohio also specified a process for their replacement if the bank will not renew them. Ohio revised subsection (B)(8) to specify that the margin for collateral bond is the ratio of the bond value to market value. Ohio added subsection (B)(10) to include terms and conditions for trust funds, including that they must: (a) be in amount equal to the reclamation cost estimate; (b) be in a form approved by DMRM and contain all terms and conditions DMRM requires; (c) use investment objectives specified by DMRM; (d) terminate only as specified by DMRM upon a determination that no further reclamation is necessary, that replacement has been filed, or that administration in accordance with its purposes requires termination; (e) that release of money from the trust fund be made only upon written authorization from DMRM or according to a schedule established in an agreement that accompanies the trust fund; and (f) that the institution serving as the trustee must be a bank, trust company, or other financial institution with trust powers that is organized or authorized to do business in Ohio.

Finally, Ohio removed two provisions related to surety and bank insolvency and combined them into one provision at subsection (B)(11) so that it applies to any surety, bank, trust company or other institution providing any of the forms of performance security. Ohio's new provision provides that if these institutions become incapacitated by reason of bankruptcy, insolvency, or suspension or revocation of its license, then the operator will be deemed in violation. Ohio then incorporates the process under ORC 1513.08(J), discussed above for notification, submission of a plan for replacement, and eventual replacement within certain periods of time depending on the method of performance security (bond pool or full-cost), including, importantly, that permittees who are reliant on the Reclamation Forfeiture Fund will have up to one year to replace coverage.

OSM Finding: First, we incorporate here our findings about the addition of trust funds as acceptable performance security in our discussions of ORC 1513.01(W) (defining *performance security*), ORC 1513.08(I) (authorizing trust funds as performance security), and OAC 1501:13–1–02(WWWWWW) (defining *trust fund*). In those discussions, we mentioned the importance of the terms and conditions we placed on the use of trust funds in our Federal program in Tennessee, see 30 CFR 942.800, and reiterated in our recent approval in West Virginia. We find that the six conditions that Ohio included here at subsection (B)(10) are substantively identical to, and no less effective than, those we require in Tennessee at 30 CFR 942.800(c)(1), (2), (4)–(7). Ohio includes the remaining Federal conditions not referenced here in the language of the other statutory and regulatory provisions mentioned above, which together capture all the conditions we required for our Federal program in Tennessee. Therefore, we approve the provisions here at (A)(4) and (B)(10).

We note that Ohio's provisions about the licensing of entities that hold performance security derive from ORC 1513.08(G) and we incorporate our discussion of that section above. We also find that Ohio's revisions to subsections (B)(5), (B)(6), and (B)(7) reflect the Federal requirements at 30 CFR 800.20, *Surety bonds,* 800.21, *Collateral bonds,* and 800.30, *Replacement bonds,* and, to the extent they provide additional detail conditions or detail, they are no less effective than the Federal regulations. Similarly, while no Federal regulation exists that specifically requires the name of the permittee on the performance security to be identical to the name on the permit, Ohio's requirement does not render its program less effective than the Federal regulations. Finally, concerning subsection (B)(11), we incorporate here our discussion of ORC 1513.08(J) above. We note that Ohio's provision here is substantively identical to its statutory counterpart, with some additional phrasing identical to that from the Federal regulation at 30 CFR 800.16(e)(2). While we approve subsections (B)(11) and (B)(11)(a), we do so consistent with our decision on ORC 1513.08(J), meaning we do not approve subsection (B)(11)(b) to allow permittees who have elected to rely on the bond pool up to one year to replace its performance security.

OAC 1501:13–7–04: Self-Bonding

Ohio proposed revising the self-bonding requirements to provide that an indemnity agreement, submitted by a limited liability company, must be signed by at least one member who is authorized to bind the company. The revision required that a copy of such authorization must be provided along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws.

OSM Finding: By letter dated November 30, 2015 (Administrative Record No. OH–2194–01), Ohio submitted a program revision that, among other things, rescinded this rule in its entirety and explained that Ohio will no longer accept self-bonding. We docketed that amendment at SATS No. OH–258–FOR. See 85 FR 26413 (May 4, 2020). Therefore, we do not make any decision on the revisions proposed here and will address this rule in our final decision on OH–258–FOR.

OAC 1501:13–7–05: Procedures, Criteria, and Schedule for Release of Performance Security for Permits Reliant on the Reclamation Forfeiture Fund (Bond Release)

Ohio revised this section to specify that this rule applies to a permittee that provides performance security together with reliance on the Reclamation Forfeiture Fund. Ohio revised subsection (A)(1) to require that the request for approval of a reclamation phase must also include a request for release of performance security. Ohio revised subsection (A)(2)(c) to require that the request for approval of a reclamation phase III must state the number of acres of the area requested for release that are reclaimed as lands eligible for remining. Ohio revised subsection (B)(1)(b), regarding the criteria and schedule for release of performance security, to add that phase II will be determined to be complete when, among the other enumerated requirements, any permanent structures to be maintained as part of the postmining land use are included in the approved reclamation plan. Concerning the approval of a reclamation phase, Ohio added new subsection (B)(2)(f) to provide that a portion of an incremental area requiring a reduced period of liability because of its classification as a remining area shall be separated from the rest of the incremental area and shall be eligible for phase III performance security release under OAC 1501:13–9–15(O), which includes the revegetation success standards for lands eligible for remining.

OSM Finding: We have determined that the provision specifying that this section, as revised, applies only to applicants relying on the Reclamation Forfeiture Fund is a non-substantive change and does not affect the implementation of the Ohio program because Ohio proposes to address the release of performance security for permittees who do not rely on the bond pool at newly created OAC 1501:13–7–05.1, discussed below. We have determined that the provision requiring requests for release of performance security to accompany requests for approval of reclamation phase work, so that they are made at the same time, is consistent with Federal regulations found at 30 CFR 800.40, which does not treat those as separate requests. The provision about the reporting of remining acres and separation of those acres for phase III bond release, as well as the provision about the period of liability for remining area, do not have direct Federal counterparts but are not inconsistent with SMCRA or the Federal regulations found at 30 CFR 800.40(c)(3) and subsections (c)(2)(ii) of 816.116 and 817.116, which make the period of revegetation responsibility for lands eligible for remining different than the period of responsibility for other lands. The provision about permanent structures is consistent with the regulations found at 30 CFR 800.40(a)(3) and (c)(1)–(2), which stress that the work be completed in accordance with the approved reclamation plan. For these reasons, we approve these revisions to OAC 1501:13–7–05.

OAC 1501:13–7–05.1: Procedures, Criteria and Schedule for Release of Performance Security for Permits Not Reliant on the Reclamation Forfeiture Fund

Ohio created this new rule to apply only to a permittee that provides performance security without reliance on the Reclamation Forfeiture Fund. This rule provides the terms, conditions, and procedures for seeking approval of a reclamation phase and release of performance security, and the criteria and schedule for release of performance security. Ohio used OAC 1501:13–7–05.1 as the template for this rule, including all the revisions discussed above, with two general distinctions. First, Ohio made revisions throughout to account for the relevant term for discretely bonded portions of conventionally bonded sites—*incremental mining unit*—defined at OAC 1501:13–1–02(QQQ), discussed above, as distinguished from the term *incremental area* used for permits that rely on the bond pool. Second, Ohio created subsection (A)(1)(b) to provide that a permittee under this section may seek approval of a reclamation phase for designated areas *within* the permit area or incremental mining unit without simultaneously seeking release of the relevant performance security. Ohio also made revisions throughout to accommodate this distinction.

OSM Finding: This new section reorganizes the Ohio Administrative Code to segregate the procedures for the release of performance security for permits that rely on the Reclamation Forfeiture Fund from those that do not. The distinction Ohio created with this rule, by allowing operators to seek approval of phases of reclamation for designated areas within the permit area or incremental mining unit, does not have a basis in the Federal regulations. We understand that an operator may wish to seek approvals for such designated areas as they achieve reclamation standards, but DMRM may not approve bond release because the cost estimate for the performance security is based on the entire acreage of the permit or incremental mining unit. Ohio's process and criteria for releasing performance security appear to remain the same and continue to comply with the Federal process and standards at 30 CFR 800.40, as discussed above. Because Ohio's addition of phase approvals for designated areas is an additional, optional process that does not otherwise change the requirements for release, we find that it does not render Ohio's program less effective than the Federal regulations. Therefore, we approve OAC 1501:13–7–05.1.

OAC 1501:13–7–06: Performance Security Forfeiture Criteria and Procedures

In addition to minor revisions to account for the Ohio program's adoption of the terms (and concepts of) performance security and incremental mining units, Ohio also revised subsection (C)(5) to account for trust funds as an additional form of performance security, providing that, should the permittee fail to enter into a reclamation agreement or fail to comply with the terms of the reclamation agreement, the forfeiture order must inform the permittee that the State will proceed as set forth in the terms of the trust agreement.

Ohio revised subsection (C)(1) and deleted subsection (F)(3) to eliminate the requirement that DMRM determine how much of the performance security to forfeit based on the given formula, with the option of forfeiting additional amounts if, during reclamation, it appears that the cost of reclamation is greater than the performance bond filed for the incremental area and there remains on file performance bond which have not already been forfeited Instead, Ohio added new language to subsection (C)(1) to clarify that DMRM will order forfeiture of all remaining performance security on deposit for the permit.

OSM Finding: We have determined that the provisions in this section are consistent with Federal regulations found at 30 CFR 800.50, which concerns forfeiture of bonds. The addition of text about forfeiture procedures if the performance security is a trust is no less effective than the regulations and is consistent with our determination above about the conditions on trust funds at OAC 1501:13–7–03(B)(10)(D). Regarding the forfeiture of all bonds on the permit, incremental area, or incremental mining unit, we note that 30 CFR 800.50(d)(1) provides that the operator is responsible for remaining costs required for reclamation in excess of the bond forfeiture amount, and the State may complete the reclamation and recover the additional costs. One manner that Ohio may obtain the extra funds would be to revoke the bond on the areas remaining for the permit. Additionally, while 30 CFR 800.50(d)(2) requires the regulatory authority to return any unused funds to the party from whom they were collected, in States that consider unused funds to be a so-called 'penal bond' and the State reserves the right to use those funds for approved purposes, we have found that position to be more stringent than the Federal regulations. *See* 62 FR 60169, 60171 col. 2 (Nov. 7, 1997). Therefore, we approve these revisions to OAC 1501:13–7–06.

OAC 1501:13–7–06.1: Tax Credit for Reclamation Outside an Applicant's Permit Area

This is a new rule that applies to a permittee providing performance security with reliance on the Reclamation Forfeiture Fund who wishes to claim a severance tax credit under ORC 5749.11. This rule sets forth the terms and conditions under which DMRM may approve an application to perform reclamation on a site not under permit of the permittee and establishes eligibility and application requirements for permittees applying for a severance tax credit. It also establishes procedures for obtaining the severance tax credit once reclamation is completed.

OSM Finding: This provision has no Federal counterpart. However, as we mention in our discussion of the tax credit at ORC 5749.11 and the tax credit certificate at ORC 1513.171, allowing a permit holder in good standing to reclaim a site that another entity adversely affected by coal mining, and to receive in return a severance credit, advances one of the primary purposes of SMCRA, which is ''to protect society and the environment from the adverse effects of surface coal mining operations.'' 30 U.S.C. 1202(a). As such, the provision is not inconsistent with SMCRA or its Federal regulations. Therefore, we approve the revisions to OAC 1501:13–7–06.1.

OAC 1501:13–7–08: Reclamation Phase Approval Conference and Performance Security Release Conference

Ohio revised this section (including its title) to accommodate reclamation phase approvals available pursuant to Ohio's new full-cost bonding system. This section allows DMRM to approve phases of completed reclamation on designated areas within the entire permit area or on specific incremental mining units without a release of performance security.

OSM Finding: Ohio's revisions merely extend Ohio's existing conference process, which conforms to the process required by the Federal regulations at 30 CFR 800.40(f), to Ohio's phase approvals. As we discussed above regarding OAC 1501:13–7–05.1, Ohio's phase approvals may precede the release of bond, which can only occur when the *entire* incremental mining unit or permit area meets the phase requirements. The Federal regulations do not contemplate these events occurring separately, but, in jurisdictions where they do, we find that adding the opportunity for a conference at phase approval is an appropriate measure and note that the opportunity for a conference is still provided at the proposed release of the performance security. Therefore, we approve the revisions to OAC 1501:13–7–08.

OAC 1501:13–14–05: Informal Conferences

Ohio revised this provision to add adjustments of performance security to the list of events for which an adversely affected person may request an informal conference and to make related revisions to the existing procedures to reflect this addition. For instance, the revisions provide that the request must be filed with DMRM not later than 30 days after receipt by the permittee of the proposed performance security adjustment and that the conference be held within 60 days following receipt by the permittee of a performance security adjustment. In 2010, Ohio added paragraph (B)(3) to provide that if the informal conference has been held, DMRM will issue and furnish the applicant for a permit, persons who participated in the informal conference, and persons who filed written objections, with the written finding of DMRM granting or denying the permit in whole or in part and stating the reasons therefore within 60 days of the conference provided that DMRM comply with the other time frames established in OAC 1501:13–5–01 (*i.e.,* making a decision on complete permit applications within 240 days, subject to notice of expected delay provided by DMRM).

OSM Finding: We have determined that the revisions proposed for this section are consistent with the Federal regulations at 30 CFR 800.15(b)(2), which states that the regulatory authority will provide the permittee with an informal conference on the bond adjustment if requested. This revision makes clear that this is the case in Ohio when there is a reduction in bond amount. The revisions remain consistent with our requirements for informal conferences at 30 CFR 773.6, and 30 CFR 773.7 by establishing a timeline for scheduling an informal conference and providing a decision after the informal review within 60 days. The revisions are also consistent with the revisions to ORC 1513.07(I) and ORC 1513.08(E), which we have approved, and we incorporate the findings for those sections here. Therefore, we approve the revisions to OAC 1501:13–14–05.

D. Actuarial Analyses and Program Condition

Included in our analysis are eight actuarial reports submitted to the Ohio Governor by the RFFAB about the Reclamation Forfeiture Fund by letters dated June 2009, June 2011, June 2015, June 2017, June 2019, June 2021, June 2023, and June 2025. Our focus in this decision will be on the 2025 actuarial report with comparisons to the 2023 actuarial report because these are the most current reports. The previous reports provide additional snapshots through time of the solvency of the bond pool and the progress since the analysis began.

In July 2017, Ohio transferred $5 million out of the Reclamation Forfeiture Fund into the Ohio general fund authorized by the Ohio 131st General Assembly, which permitted the Director of Management and Budget to transfer non-general revenue funds. At that time, we expressed our concerns to Ohio about the impact this withdrawal may have on the solvency of the bond pool (Administrative Record No. OH.2185.77). Ohio explained the action and that this was a one-time transfer (Administrative Record No. OH.2185.78). As noted in the June 2021 letter from the Board transmitting the 2021 Actuarial Report to the Governor, a total of $4 million has been returned to the bond pool, $2 million in 2019 (see Administrative Record No. OH.2185.88) and another $2 million in 2021. The Board further noted that restoring this funding was critical for the bond pool to properly cover reclamation costs and other liabilities.

The 2025 letter from the Board did not recommend changes to the severance tax rates. Ohio has not made any adjustments to the rates set at ORC 5749.02(A)(8) in 2007, which by law self-adjusts between 12 cents, 14 cents, and 16 cents per ton of coal depending on the balance of the bond pool. The 2025 actuarial report indicated that the Reclamation Forfeiture Fund met the criteria for long-term solvency to cover expected liabilities, and that the bond pool's expected long-term liability decreased from $12.12 million in 2023 to $11.61 million in 2025. The bond pool balance at the end of 2024 was $28,520,000 with no current liabilities, an increase from the year end 2022 balance of $26,460,00. The RFFAB in their cover letter indicated that Ohio's DMRM works diligently to enforce contemporaneous reclamation requirements and oversee reclamation of bond-forfeited sites. However, the report also noted that the financial strength of Ohio's coal industry continued to decline from 2022 to 2024, and the Board must continue to take a conservative approach in forecasting coal production and interest income.

Program Condition and 733 Letter

We have determined, based on the information gathered in the actuarial analyses, and considering the changes we are approving in this amendment, that Ohio has satisfied the program condition described at 30 CFR 935.11(h) and the requirements we required in the 733 letter.

The program condition requires Ohio to demonstrate that its bond pool can assure timely reclamation at all sites for which bond have been forfeited. The most recent actuarial analysis of the Reclamation Forfeiture Fund has concluded that the bond pool is solvent in the short-term and long-term. The provisions approved in this amendment include an increase in the severance tax that funds Ohio's bond pool, an expansion of the sources of funding for the bond pool, automatic severance tax increases if the bond pool falls below specified amounts, the creation of an advisory board to recommend methods to increase the amount of the bond pool when needed, and stopping use of the Reclamation Forfeiture Fund to reclaim non-coal sites.

As we determined when we evaluated West Virginia's bond pool (*see* 60 FR 51900, October 4, 1995; 66 FR 67446, December 28, 2001; and 67 FR 37610, May 29, 2002), our evaluation of Ohio's Reclamation Forfeiture Fund focuses on whether Ohio has revised their bond pool to increase the revenues being added to the bond pool and whether Ohio has adopted the mechanisms to adequately adjust the revenues and revenue sources to keep the bond pool solvent. Our analysis to determine if Ohio's regulatory program meets the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) is guided by our Directive STP–1, Appendix L dated March 20, 2019, and the Secretary of the Interior's [Management By Objectives (MBO)] entitled, ''Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems,'' dated December 4, 1990. In addition to the analysis of the Ohio regulatory program, we evaluated eight separate actuarial analyses submitted with this program amendment. Our analysis indicates that, since 2009, Ohio's Reclamation Forfeiture Fund has continually improved and is more solvent today than it was in 2009 due to the changes Ohio has made to their program.

Considering the current account solvency and the mechanisms for adjusting Reclamation Forfeiture Fund income in response to future conditions, Ohio has demonstrated that its alternative bonding system can assure timely reclamation at all sites that may be in default. Accordingly, we consider the conditions of our 733 letter satisfied, and we are removing the program condition at 30 CFR 935.11(h).

E. Non-Bond Related Statutory Provisions

ORC 1513.02: Chief of Division of Mineral Resources Management—Powers and Duties (Revised by HB 443)

Ohio revised subsection (A) of this provision to authorize the chief of DMRM to establish programs and adopt rules governing the use of diesel equipment in underground coal mines; revised subsection (C) to add that regulations related to permitting compliance, bond forfeiture, diesel equipment in underground mines, and potential future state programmatic general permit issued by the U.S. Army Corps of Engineers (USACE) must go through Ohio's administrative rulemaking process under ORC Chapter 119; and added subsection (J) to authorize DMRM to adopt rules to implement any future state program, covered by an ACOE-issued state programmatic general permit, for the discharge of dredged or fill material into the waters of the United States by operations that conduct surface and underground coal mining and reclamation operations or restoration of abandoned mine lands. At the time of this publication, Ohio has not yet entered into a state programmatic general permit with the USACE.

OSM Finding: First, we note that neither SMCRA nor its implementing regulations regulate the use of diesel equipment in underground mines, and SMCRA and its implementing regulations do not proscribe any particular rulemaking process for State regulatory authorities. Therefore, we need not address the revisions to subsections (A) or (C). Regarding the addition of subsection (J), we note that it does not by itself change any provision of Ohio's regulatory program; it only authorizes hypothetical future rulemaking that would independently constitute a State program amendment under 30 CFR 732.17, made necessary by independent action by the USACE. Granting the chief the authority to take measures to implement programs pursuant to USACE programmatic general permits has no direct Federal counterpart; however, we find that these provisions are not inconsistent with SMCRA or its implementing regulations. These provisions facilitate Ohio's efforts to comply with section 404 of the Federal Clean Water Act by establishing the departmental authority to implement the related permits. Therefore, we approve ORC 1513.02(J).

ORC 1513.07: Coal Mining and Reclamation Permit—Application or Renewal—Reclamation Plan (Revised by HB 443, SB 386, HB 163)

In 2007, Ohio revised subsection (B)(1)(o), related permit application requirements, to add a provision that, if test borings or core samplings from the permit area indicate the existence of potentially acid forming or toxic forming quantities of sulfur in the coal or overburden to be disturbed by mining, the permit application also must include a statement of the acid generating potential and the acid neutralizing potential of the rock strata to be disturbed calculated in accordance with a method established at ORC 1513.075 or another calculation method. Ohio also added a corresponding revision at subsection (E)(8), related to permit application review, that if a conflict exists between the results of various methods of calculating potential acidity and neutralization potential for the purpose of assessing the potential for acid mine drainage, the permit must include provisions for monitoring and recordkeeping to identify unanticipated occurrences of acid mine water and impose additional requirements on mining practices and site reclamation to prevent discharge from the site.

In 2009, Ohio revised subsection (E)(1), related to permit application review, to establish that an application will be deemed complete unless DMRM provides a copy of a written list of deficiencies to the applicant within 14 days of submission. Ohio also added a provision to specify that a permit denial must state in writing the specific reasons for the denial. Separately, Ohio also revised subsection (E)(1) and (I), related to permit decisions and related timeframes. These revisions eliminated the condition that a decision to grant, require modification of, or deny a permit occur in a reasonable time established by DMRM and replaced that condition with a requirement that the permit decision occur not later than 240 days after submission of a complete application; the 240 days does not count time an applicant is making revisions to the application to provide additional information required by DMRM. Ohio's revision further specifies that if DMRM determines that a permit decision cannot be made within that time frame, DMRM must provide the applicant with a written notice of the expected delay no later than 210 days following the submission of the complete application. Ohio's revision at subsection (I)(1) specifies that DMRM must comply with these timeframes even when an informal conference has been held.

Finally, in 2011, Ohio revised subsections (E)(2)(e)(i)–(iii), related to the permit applicant's right-of-entry to the land comprising the proposed permit area, to emphasize the surface disturbance resulting from proposed operations. These provisions now provide that, in cases where the private mineral estate has been severed from the private surface estate and surface disturbance will result from the extraction of coal by the applicant's proposed strip mining operation, the permit applicant must provide the enumerated documents evidencing its right to cause such surface disturbance.

OSM Finding: The requirement to include information on acid generating potential and neutralizing potential of rock strata conforms with Federal permit application standards at 30 CFR 780.22(b)(2), which more generally requires chemical analysis identifying those strata that may contain acid- or toxic-forming or alkalinity-producing materials and to determine their content, and 30 CFR 780.22(c), which allows the regulatory authority to require additional analysis if necessary to protect the hydrologic balance or meet performance standards. Likewise, for the additional monitoring, recordkeeping, and response measures to identify and address potential acid mine water if conflicting results exist between various methods of calculating potential acidity and neutralization potential, we find that when read in conjunction with ORC 1513.07(E)(2)(c) (requiring the proposed operation to be designed to prevent material damage to the hydrologic balance outside the permit area), subsection (E)(8) is no less effective than the Federal requirements at 30 CFR 773.17, *Permit conditions,* and 780.21, *Hydrologic information.* Ohio imposes these conditions when the aforementioned conflicting results occur, which may factor into, but not replace, Ohio's obligation to determine that, overall, the operation has been designed to prevent material damage to the hydrologic balance outside the permit area. Therefore, we approve Ohio's revision to ORC 1513.07(B)(1)(o) and new addition of subsection (E)(8).

The requirement that DMRM notify applicants of any deficiencies in writing within 14 days, otherwise the application is deemed complete, is inconsistent with SMCRA and its implementing regulations. The automatic presumption of administrative completeness without the affirmative response from DMRM is less effective than 30 CFR 773.15, which requires the regulatory authority to issue a written decision that includes a finding that the application is accurate and complete. Ohio maintains this same requirement at ORC 1513.07(E)(2)(a). The Federal regulation and ORC 1513.07(E)(2)(a) place the burden of establishing that the permit application is complete and in compliance with the regulatory program on the applicant, and the lack of written findings by the regulatory authority within 14 days of the permit application does not make an otherwise incomplete application complete. While Ohio may have intended this provision to simply begin the clock for the requirement that DMRM issue permit decisions within 240 days of the submission of a complete application, discussed below, it is unclear whether this provision would preclude DMRM from subsequently basing a permit denial on the incompleteness of the application. Therefore, we do not approve this revision to ORC 1513.07(E)(1). We also note here that, in 2015, Ohio further revised this subsection to state that an application must not be considered incomplete or denied for lack of right-of-entry documentation provided that the applicant included such documentation for at least 67% of the proposed operational area. This revision is the subject of a separate pending program amendment, which we docketed at SATS No. OH–256–FOR, and we do not address it here.

Concerning the requirement for DMRM to issue its permit decision within 240 days of receiving a complete application, we find that, as drafted, it is no less effective than the Federal regulations at 30 CFR 773.7(a), which states that the regulatory may set a reasonable time in which to issue its permit decisions. We note that, while

240 days may not be reasonable for all permits, Ohio's requirement neither compels DMRM to grant a permit nor considers the permit granted should DMRM not comply with either the 240-day limit or the 210-day notice of expected delay. While a permit applicant may use these limits to compel some decision from DMRM, the revisions do not compel permit issuance. Therefore, we approve the relevant revisions to subsections (E)(1) and (I).

Finally, the provision at subsection (E)(2) that applicants must present right-of-entry documentation only in cases where the mineral estate and surface estate are severed and surface disturbance will result from the proposed strip mining is no less stringent than section 510(b)(6) of SMCRA, 30 U.S.C. 1260(b)(6), and no less effective than the Federal regulations at 30 CFR 778.15. The proposed revisions to the Ohio regulations contain identical language to the Federal regulations, with the added clarification that the provisions apply for areas where surface disturbance will occur. In cases where the applicant owns the mineral rights to the coal and the operation will not disturb the surface, the owner of the surface rights will not be affected. Access points, in the case of room-and-pillar or augur mining, would qualify as surface disturbance, and applicants would need to present right-of-entry documentation for such locations. Therefore, we approve the revision to ORC 1513.07(E)(2)(e). We are doing so with the understanding that applicants will demonstrate ownership of the mineral estate in such cases, as required elsewhere in the Ohio program. If we determine, in the future, that Ohio is implementing this provision differently, we may require Ohio to submit an amendment to revise its regulatory program to reflect our understanding of this provision. We also note that Ohio made a corresponding revision to its regulations at OAC 1501:13–4–03 in 2016, which is part of a separate program amendment docketed at SATS No. OH–258–FOR; we will address that provision in a future amendment.

ORC 1513.073: Designating Areas as Unsuitable for Coal Mining Operations (Revised by HB 163)

The designation criteria were revised to clarify that prohibitive distances for mining close to public roads, occupied dwellings, public buildings, schools, churches, community or institutional buildings, public parks, and cemeteries are measured horizontally.

OSM Finding: Ohio's clarification about how measurement is made reflects the language of the SMCRA regulations at 30 CFR 761.11 and does not substantively change Ohio's existing requirement. We also note that Ohio made a similar clarification to its regulations at OAC 1501:13–4–03(E) in 2016, which we address in a separate program amendment docketed at SATS No. OH–258–FOR. Because this clarification does not change the requirements and reflect the Federal language, we approve it.

ORC 1513.075: Potential Acidity and Neutralization of Disturbed Strata (Created by HB 443, Revised by HB 163)

This is a new section that describes how DMRM may evaluate whether a coal mining permit application has the potential to create acid or other toxic mine drainage, which DMRM must determine to decide whether the permit may be approved consistent with the permit application requirements of ORC 1513.07 and related environmental performance standards in ORC 1513.16. The rule defines the terms ''potential acidity'' and ''neutralization potential'' as laboratory measurements of those parameters that could be produced by material in rock strata proposed to be disturbed by mining, expressed as tons of acidity or neutralization potential per 1,000 tons of disturbed overburden. The rule defines ''test borings or core samplings'' as those performed on the rock strata, the results of which must be stated in the permit application. The new rule also describes how the measurement of potential acidity may be based on laboratory analysis of the pyritic sulfur content of the coal and overburden rather than total sulfur content, that tons of rock may be estimated and the sum measurements for each strata across the proposed permit area may be used to calculate the site's overall neutralization potential and potential acidity, and numeric conditions under which proposed mining areas may not be considered to have the potential to create acid or other toxic mine drainage.

OSM Finding: Although the provisions in this section have no direct Federal counterparts, we have determined that they are no less stringent than SMCRA and no less effective than its implementing regulations. These provisions provide a sound and reasonable methodology for measuring the acidity and neutralization potential of disturbed rock strata. These measurements will be used by Ohio to improve their decisions in approving permit applications and enforcing minimization of damage to the hydrologic balance. As we have already approved Ohio's permitting and hydrologic balance regulations as no less effective than the Federal regulations at 30 CFR 780.21(h), these new provisions describing sound methodology for informing Ohio's permit decisions to ''[a]void acid or toxic drainage'' are likewise no less effective than the Federal regulations. Therefore, we approve ORC 1513.075.

ORC 1513.076: Agency Coordination and Cooperation Respecting Permits (Created by SB 386)

This provision is a new section that requires coordination, cooperation, and communication between the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency about the processing of coal mining permit applications. It requires establishment of a joint-agency task force to ensure that procedures are established and implemented. Ohio proposes these changes to reduce delays in processing permits.

OSM Finding: We have determined that these provisions have no direct Federal counterpart but are not inconsistent with the regulations found at 30 CFR 731.14(g)(9), which required a State regulatory authority to provide a narrative description of its permit coordination system as part of its submission to have its State program approved by OSM; it is also similar to 30 CFR 773.5, which requires coordination between different agencies to avoid duplication for the review of various Federal wildlife and historic preservation laws. Ohio's addition of this provision ostensibly strengthens or clarifies the system of cooperation between Ohio's DMRM and EPA to ensure the proper issuance of permits related to water quality. Therefore, we approve ORC 1513.076.

ORC 1513.13: Public Adjudicatory Hearings (Revised by HB 443)

Ohio revised this section, which relates to appeals made to the reclamation commission, to clarify that the party petitioning for costs and expenses may only be awarded its own costs and expenses, including attorney's fees that were necessary and reasonably incurred for, or in connection with, participating in the proceeding before the commission.

OSM Finding: We have determined that the limitation of expense reimbursements to the petitioning party is no less effective than the Federal regulations at 43 CFR 4.1294 and consistent with Ohio's existing language before the clarification. Therefore, we approve ORC 1513.13(E).

ORC 1513.29: Council on Unreclaimed Strip Mined Lands (Revised by HB 443, Later Repealed)

Subsequent to Ohio's submission of this amendment, Ohio repealed this section through House Bill 471 (HB 471) (approved December 19, 2016), 2016 Ohio Laws 140. We discussed the sunsetting of the Council on Unreclaimed Strip Mine Lands in our approval of Ohio's reclamation plan amendment docketed at SATS No. OH–259–FOR. See 89 FR 79436 (Sept. 30, 2024). Therefore, we are not issuing a finding on ORC 1513.29 here.

ORC 1513.30: Unreclaimed Lands Fund; Selection of Project Areas (Revised by HB 443, Subsequently Renamed and Amended)

Subsequent to Ohio's submission of this amendment, in 2016, Ohio further amended this section through HB 471 to delete references to the Council on Unreclaimed Strip Mined Lands, discussed above; it was amended again in 2017 through HB 49, which renamed the Unreclaimed Lands Fund to the Mining Regulation and Safety Fund and consolidated it with other funds, such as the mining administration and reclamation reserve fund created under former ORC 1513.181. *See* Ohio Legislative Service Commission, Final Analysis of Am. Sub. H.B. 49, pp. 479–480 (corrected version). In its current form, ORC 1513.30 states that the Mining Regulation and Safety Fund will be used for: (1) reclaiming certain coal mine lands, or controlling mine drainage, for which no cash is held in the Reclamation Forfeiture Fund created by ORC 1513.18; (2) reclaiming certain under-bonded or unpermitted noncoal mining operations; and (3) administration and enforcement of Ohio's coal regulatory program.

OSM Finding: While the use of this multi-purpose Mining Regulation and Safety Fund extends beyond abandoned mine land reclamation under Title IV of SMCRA, we acknowledged its relationship to Title IV reclamation generally in our approval of Ohio's reclamation plan amendment docketed at SATS No. OH–259–FOR. *See* 89 FR 79436 (Sept. 30, 2024). To the extent the Mining Regulation and Safety Fund now has additional elective purposes, Ohio does not rely upon it to ensure the sufficiency of its Reclamation Forfeiture Fund under ORC 1513.18, discussed above. Nor have we seen any ''significant changes in funding or budgeting relative to the approved program'' as a result of the revisions that would require notification under 30 CFR 732.17(b)(6). For these reasons, even though Ohio had not submitted, and we had not published notice of, the 2016 and 2017 revisions to ORC 1513.30, we find that notice and public procedure under section 553 of the APA, 5 U.S.C. 553(b)(B), for these revisions are impracticable, unnecessary, and contrary to public interest, and we approve them.

ORC 1513.371: Mined Land Set Aside Fund (Created by HB 443, Revised by HB 163, Later Repealed and Reenacted for a Different Purpose)

This section was originally included in the proposed rule to create a ''mined land set aside fund'' consisting of grants made under section 402 of SMCRA, which is part of the Title IV AML program. The provision was later repealed by Ohio House Bill 59 (approved June 30, 2013), 2013 Ohio Laws 36, and later reenacted for a different purpose through House Bill 96 (approved June 30, 2025), 2025 Ohio Laws 14, to receive grants awarded through the federal Infrastructure Investment and Jobs Act, Public Law 177–58. Neither the former nor the current version of this provision relates to the State program to regulate surface coal mining and reclamation operations. Therefore, we are not issuing a finding on this section. Should this new provision necessitate any revision to Ohio's Reclamation Plan, we will address it through the process outlined in 30 CFR part 884.

ORC 1513.372: Immunity From Liability (Created by SB 181)

This provision is a new section establishing the conditions under which an eligible landowner who allows access to their property for AML reclamation, or nonprofit organization that provides funding or free services for an AML reclamation project, is immune from liability for injuries or damages that occur during an AML or acid-mine drainage reclamation project. It includes definitions of ''abandoned mine land,'' ''eligible landowner,' ''landowner,'' ''nonprofit organization,'' ''reclamation project,'' and ''reclamation project work area.'' It also establishes procedures for notifying DMRM of known, latent, dangerous conditions located at the reclamation project work area. Finally, it sets forth circumstances within which the immunity would not apply, including the negligence, gross negligence, willful misconduct, or unlawful activities of the eligible landowner or nonprofit organization, or the failure to notify the division of known, latent, dangerous conditions located at a reclamation project work area that is not the subject of the reclamation project itself.

OSM Finding: We approved a similar statute in West Virginia, where we acknowledged the EPA's concern about the possible legal effects of the proposed provisions on its authority under the Clean Water Act. 71 FR 10764 (Mar. 2, 2006). We also note that Ohio's provision cannot provide immunity from Federal laws. Section 702(a) of SMCRA, 30 U.S.C. 1292, provides that nothing in the Act can be construed as superseding, amending, modifying, or repealing other Federal laws or regulations promulgated thereunder. However, we also note that this provision relates solely to Ohio's abandoned mine land (AML). In our decision on recent changes to Ohio's approved Reclamation Plan docketed at SATS No. OH–259–FOR, we explained that generally, States do not request that OSMRE accept changes to AML statutes or regulations as amendments to its Reclamation Plan, which is a narrative document that usually is not in the form of a statute or regulation. See 89 FR 79436, 79437 n.1 (Sept. 30, 2024). For clarity and ease of reference, we recommend that Ohio submit changes to its Reclamation Plan narrative document under 30 CFR part 884 that are consistent with these statutory amendments.

F. Non-Bond Related Regulatory Provisions

OAC 1501:13–1–02: Definitions

In 2009, Ohio made the following revisions to this section:

Added the term *angle of draw,* currently at subsection (H), meaning the angle with the vertical, made by a straight line extending away from the edge of a mined-out area to the ground surface, spanning the horizontal distance in which subsidence may occur.

OSM Finding: The Federal regulations do not define this term, but Ohio's definition conforms to our prior use of that term in the Federal regulations at 30 CFR 784.20, *Subsidence control plan,* and 817.121, *Subsidence control.* Although we have since removed the relevant provision from 30 CFR 817.121, *see* 91 FR 3373 (Jan. 27, 2026), and that portion of 30 CFR 784.20 is currently suspended, *see* 64 FR 71652 (Dec. 22, 1999), Ohio's definition does not render the Ohio program less effective than the Federal regulations, and we approve it.

Revised the terms *engineer* and *surveyor,* currently at subsections (TT) and (OOOOOO), respectively, to clarify *professional* engineer or surveyor, consistent with the phrasing of Ohio's licensing requirements at ORC Chapter 4733 (Professional Engineers and Professional Surveyors).

OSM Finding: The Federal regulations do not define these terms; however, the term professional reflects a qualification provided under State law. *See, e.g.,* 30 CFR 817.49(a)(11). Therefore, Ohio's revision is consistent with the Federal regulations, and we approve it.

Revised the term *operator,* currently at subsection (IIII), to specify that it may include the permittee or a contract operator, if the permittee or contract operator are conducting the mining operation.

OSM Finding: The Federal regulations at 30 CFR 701.5 define the term *operator* to mean, in pertinent part, any person engaged in coal mining who removes or intends to more than 250 tons of coal. Ohio's revision simply states explicitly the implication in both the Federal definition, and Ohio's definition, that a permittee or a contract operator may be the entity engaging in coal mining. Therefore, we approve it.

Added the term *shadow area,* currently at subsection (ZZZZZ), meaning the surface areas above, and within the angle of draw of, the underground workings of underground coal mines. Ohio separately defines the term *underground workings.*

OSM Finding: The Federal regulations neither define the term *shadow area* nor do they use the term at all. However, the Federal regulations do make several references to underground workings, noticeably in 30 CFR 817.122, which requires underground mine operators to notify all owners and occupants of surface property and structures above the underground workings at least six months before mining. Section 516 of SMCRA specifically requires the Secretary ''to accommodate the distinct difference between surface and underground mining.'' 30 U.S.C. 1266. We have also previously approved Illinois' definition of the term, treated as distinct from permit area. *See* 85 FR 12735, 12736 (March 4, 2020). Therefore, we find Ohio's definition of the term shadow area does not render the program less effective than the Federal regulations, and we approve it.

In 2010, Ohio made the following revisions to this section:

Added the term *effluent limitations,* currently at subsection (RR), to mean specific, numeric, measurable limits on the amount of various pollutants that are placed on point source discharges through the national pollutant discharge elimination system (NPDES), and, for remining NPDES permits that use non-numeric limitations, to mean best management practices as required under that remining NPDES permit.

OSM Finding: The Federal regulations at 30 CFR Chapter VII (OSM), do not define the term *effluent limitations;* however, several provisions use the term. Notably, the regulations at 30 CFR 816.42 and 817.42, *Hydrologic balance: Water quality standards and effluent limitations,* require that discharges of water from areas regulated under SMCRA be made in compliance with all applicable State and Federal water quality laws and regulations, and with the effluent limitations for coal mining promulgated by EPA at 40 CFR part 434. The EPA defines *effluent limitation* at 40 CFR 122.2 and 401.11, to mean, in pertinent part, *any* restriction imposed by EPA on quantities, discharge rates, and concentrations of pollutants discharged from point sources into waters of the United States. EPA's regulations for coal mining discharges at 40 CFR part 434, include numerical limitations for all such discharges except remining discharges, which receive non-numerical limitations at 40 CFR 434.72. Ohio's definition, while not identical to EPA's, encompasses both relevant discharge limitations provided by EPA and does not render Ohio's program less effective than 30 CFR 816.42 and 817.42. Therefore, we approve it.

Added the term *national pollutant discharge elimination system* and *NPDES,* currently at subsection (AAAA), meaning the national permit program authorized under the Clean Water Act, 33 U.S.C. 1251 *et seq.,* that controls water pollution by regulating point source discharges that discharge pollutants into waters of the United States.

OSM Finding: The Federal regulations at 30 CFR Chapter VII (OSM) do not define this term. However, it appears generally consistent with EPA's definition at 40 CFR 122.2, and, important for Ohio's purposes, its use in defining the terms *effluent limitations* and *remining NPDES permit,* and OAC 1501:13–9–04(N)(2), requiring surface water monitoring consistent with NPDES permits, and its Federal counterpart at 30 CFR 816.41(e). In sum, this definition does not render the Ohio program less effective than the Federal regulations, so we approve it.

Revised the term *person,* currently at subsection (SSSS), to add that, in addition to the other listed entities, it may be an individual, business trust, estate, or trust.

OSM Finding: The Federal regulations at 30 CFR 700.5 defines a *person* to include, among other things, an individual, partnership, association, joint venture, company, firm, corporation, or other business entity. While the Federal definition does not specifically list business trusts, estates, or trusts, we believe that those entities are fairly implied in the existing list and specifically naming them is no less effective than the Federal regulation. Therefore, we approve this revision.

Added the term *point source discharge,* currently at subsection (VVVV), meaning any discernible, confined or discrete conveyance from which a pollutant is, or may be, discharged into the waters of the state.

OSM Finding: The Federal regulations at 30 CFR Chapter VII (OSM) do not define this term. However, Ohio's definition appears to be consistent with the definitions of the terms *point source, discharge,* and *discharge of pollutants* under EPA's regulations at 40 CFR 122.2, and Ohio's definitions of the terms *discharge* and *point source* under its water quality regulations at OAC 3745–1–02(35) and (77). Ohio uses the term *point source discharge* in its definitions of the terms *effluent limitations* and *NPDES,* described above, in its regulation relating to protection of the hydrologic system at OAC 1501:13–9–04. This regulation requires that these discharges be made in compliance with effluent limitations of all applicable state laws and regulations. Further, in its regulations relating to reclamation and operations plans at OAC 1501:13–4–05 and –14, Ohio requires that point source discharges be monitored in accordance with EPA's regulations at 40 CFR parts 122, 123, and 434 and as required by the NPDES permitting authority. These are substantially the same as the Federal regulations at 30 CFR 816.42 and 817.42, discussed above, and 30 CFR 784.14(i), regarding surface water monitoring plans. In sum, Ohio's addition of this definition does not render the Ohio program less effective than the Federal regulations, and therefore we approve it.

Revised the term *pollution abatement area,* currently at subsection (WWWW), to incorporate, to the extent practicable, areas within the permit area which are adjacent to and nearby the remining operation and which also must be affected to reduce the pollution load of the pre-existing discharges and may include the immediate location of the pre-existing discharges.

OSM Finding: We approved this revision in 2004. *See* 69 FR 57640, 57643 (Sept. 27, 2004). It is unclear why Ohio did not memorialize this revision in its regulations until its 2010 submission, but, to the extent it remained unresolved, we incorporate our 2004 findings herein.

Added the term *receiving water,* currently at subsection (LLLLL), meaning the specific water body of the waters of the state into which point and non-point sources flow.

OSM Finding: The Federal regulations do not define this term, and Ohio only uses the term once in its regulations related to the quality of water in permanent impoundments at OAC 1501:13–9–04(H)(2). Ohio's use of the term is identical to that in the Federal regulations at 30 CFR 816.49(b)(2) and 817.49(b)(2), and its definition is consistent with the context of its use. We approve this addition because it does not render Ohio's program less effective than the Federal regulations but note that we will review additional proposed uses of this term in future program amendments.

Revised the term *recurrence interval,* currently at subsection (NNNNN), to add a website address for the National Oceanic and Atmospheric Administration (NOAA) through which the NOAA technical report referenced in the definition is available.

OSM Finding: This revision is non-substantive and we approve it.

Revised the term *runoff,* currently at subsection (VVVVV), by completely deleting the existing description that the term means precipitation that is not absorbed by the strata and may flow overland before entering waters of the state, and instead providing that it means the overland flow caused by excess rainfall.

OSM Finding: The Federal regulations do not define this term; however, it does use this term in many provisions. We reviewed Ohio's use of this term in its other provisions and find that its definition is consistent with its uses and their Federal counterparts. For instance, Ohio and the Federal regulations at 30 CFR 701.5, use the term *runoff* in corresponding definitions of the terms *best technology currently available, hydrologic balance, intermittent stream, perennial stream,* and *recharge capacity,* for which Ohio's definition is an appropriate substitute for the term. Therefore, we approve this revision.

Revised the term *safety factor,* currently at subsection (WWWWW), to eliminate the option that it means the ratio of the available shear strength to the developed shear stress, leaving only that it means the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by acceptable engineering practices.

OSM Finding: The Federal regulations at 30 CFR 701.5 defines the term *safety factor* exactly as Ohio had before the proposed revision. In its rulemaking, Ohio explained that it removed the first clause because shear strength is mostly associated with materials engineering, and the remaining more generic clause simpler and easier to understand. We promulgated the Federal definition as part of the original permanent Federal program in 1979. *See* 44 FR 14902, 15320 (Mar. 13, 1979). In response to public comment offering an alternative definition, we stated that our definition ''is consistent with that utilized in engineering texts, design manuals, and other regulations,'' and provided citations. *Id.* at 14937. However, in the notice we were unclear whether we were referring to either clause specifically, or both. Regardless, we would not have included both clauses if either one would have been incorrect. Moreover, our engineers provided an informal review of Ohio's proposal and found that Ohio's remaining definition is no less effective than the definition at 30 CFR 701.5. Therefore, we approve this revision.

Revised the term *valid existing rights,* currently at (DDDDDDD), to eliminate the existing criteria that were moved to OAC 1501:13–3–01, and instead simply refer to it as a set of circumstances under which a person demonstrates compliance with the standards of that provision, subject to DMRM's approval, where the activity would otherwise be prohibited under ORC 1513.073(D) or OAC 1501:13–3–03.

OSM Finding: We incorporate here our findings about ORC 1513.073 and OAC 1501:13–3–01 and –03, which we approved elsewhere in this program amendment. We find that Ohio's decision to simply refer to those provisions here does not render Ohio's regulations less effective than the Federal requirements, and we approve the revision.

Added the term *water quality standards,* currently at subsection (IIIIIII), meaning the rules set forth at OAC Chapter 3745–1 establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.

OSM Finding: While the Federal regulations at 30 CFR Chapter VII (OSM) do not define the term, Ohio's definition is consistent with EPA's definition of the term at 40 CFR 130.3, Ohio's water quality regulations at OAC 3745–1–02(106), and how OSM uses the term throughout its regulations, particularly 30 CFR 816.42 and 817.42, *Hydrologic balance: Water quality standards and effluent limitations.* Therefore, we approve it.

OAC 1501:13–1–03: Restrictions on Financial Interest of Employees

Ohio added references to the RFFAB, as created and defined in ORC 1513.182, to this rule to clarify that the restrictions on financial interest of employees do not apply to the advisory board members. However, advisory board members do have to file an annual statement of employment and financial interest.

This section also clarifies that members of the Reclamation Commission, as created and defined in ORC 1513.05, do not have prohibited financial interests under this rule and, therefore, will never be ordered by DMRM to take remedial action. Instead, commission members are required to file statements of employment and financial interest and are required to recuse themselves from proceedings that may affect their direct or indirect financial interests. Unlike the requirements for commissioner members, prohibited financial interest provisions apply to hearing officers of the Reclamation Commission. As such, Ohio added specific references to hearing officers to the provision allowing employees and the chief of DMRM to appeal orders for remedial action.

Finally, Ohio added additional detail about employees accepting gifts of nominal value from coal companies, setting that value at $20.00 per year from a single company; Ohio added information about how an employee is notified that remedial action is necessary to resolve a prohibited interest; and Ohio added notice that employees signing a certification of financial interests without listing known prohibited interests may result in penalties.

OSM Finding: We have determined that the revisions concerning the financial interests of RFFAB members are no less effective than 30 CFR part 705. Section 705.5 defines ''employee'' to exclude such advisory board members. We have likewise determined that the revisions regarding members of the Reclamation Commission simply add clarity to existing requirements for its members. Members of these groups are required to file statements of financial interest but are only required to recuse themselves should a conflict of interest with a direct or indirect financial interest occur with their position. 30 CFR 705.4(d). We have determined that the remaining revisions are no less effective than their Federal counterparts in 30 CFR 705.17(c)(4) (penalties for false certification by employees), 705.18(b) (gifts of nominal value), and 705.21(b) (appeals to OSM). While 30 CFR 705.18(b) does not specifically define gifts of a ''nominal value'', Ohio's decision to set a limit at $20.00 per year from a single company is fully consistent with the Federal regulations. Therefore, we approve the revisions to OAC 1501:13–1–03.

OAC 1501:13–1–10: Availability of Records

In 2009, Ohio deleted from subsection (B)(2) a requirement that DMRM make documents involving permits and inspection and enforcement actions available to the public at offices of the county recorder or U.S. Department of Agriculture within the county where the operation was occurring if DMRM did not maintain a district office in that county. Ohio also deleted a provision specifying that, upon request of any resident of the area where the mining is occurring, copies of the documents will be sent by mail at the Division's expense.

OSM Finding: The provisions deleted from this section were effectively reinstated by Ohio in 2016 and are part of another program amendment that we docketed at SATS No. OH–258–FOR. Therefore, we are not issuing a finding on these provisions. To the extent Ohio's 2016 rulemaking made revisions that relate specifically to persons other than residents of the area where the mining is occurring, we will address those revisions in OH–258–FOR.

OAC 1501:13–1–14: Incorporation by Reference

This is a new rule that includes a list of all Federal regulations and Federal laws that are referenced in Chapter 1501:13 of the Ohio Administrative Code. The rule also explains where the public can find a copy of the Federal regulations and Federal laws, and the editions of the Code of Federal Regulations and United States Code in which the regulations and laws are published.

OSM Finding: This provision is not an operative component of Ohio's regulatory program, provides only references, and reflects a similar provision that used to exist at the end of OAC 1501:13–1–02 (Definitions). Therefore, we approve its addition. Ohio has made several revisions to this section since its inception in this program amendment to correct and/or adjust the references. For clarification, we do not need to affirmatively make findings for revisions to this section for the revisions to take effect unless Ohio begins to add operative regulatory requirements to this section.

OAC 1501:13–3–01: Standards for Demonstration of Valid Existing Rights

This is a new rule that describes the demonstration that a person must make to claim valid existing rights to conduct coal mining operations in areas otherwise prohibited under the approved State program, except for those lands subject to 30 CFR part 761, which require a demonstration to OSM. To claim valid existing rights, the regulation requires that a person demonstrate that they have the property rights necessary to conduct the activity, and either (a) have all necessary permits or have made a good faith effort to obtain them or (b) that the land is needed for and immediately adjacent to an operation meeting the conditions in (a). The rule also allows a person who claims valid existing rights to use or construct a road for coal mining operations across the surface of protected lands to provide other types of demonstrations, such as that the road existed when the land became protected and that the person has a right to use the road for coal mining operations.

OSM Finding: We have determined that the provisions in this section are substantively identical to, and therefore no less effective than, the definition of ''valid existing rights'' under the Federal regulations at 30 CFR 761.5. Therefore, we approve the revisions to OAC 1501:13–3–01.

OAC 1501:13–3–02: Submission and Processing of Requests for Valid Existing Rights Determinations

This is a new rule that describes the requirements for submitting a request for a valid existing rights determination to DMRM, which is required before preparing and applying for a permit or boundary revision for the land for which the determination is sought. The rule specifies what information and materials an applicant must provide to make their property rights demonstration; additional submission requirements if the basis for their claim involves the good faith/all permits standard; additional submission requirements if their claim is based on the ''needed for and adjacent to'' standard; and submission requirements if the claims involve the use or construction of roads.

This rule also describes the procedures Ohio will use to process a request for a valid existing rights determination. This includes the initial review of the request; public notice and opportunity to comment; determination of DMRM; and post-determination process.

OSM Finding: We have determined that the provisions in this section are substantively identical to, and therefore no less effective than, the Federal regulations at 30 CFR 761.16. With these changes, Ohio seeks to clarify the requirements and procedures that must be met when a request for valid existing rights is submitted to the State. Therefore, we approve the revisions to OAC 1501:13–3–02.

OAC 1501:13–3–03: Areas Where Mining Is Prohibited or Limited

Ohio reorganized this rule and added a provision to specify that the provisions of this rule do not apply to mining operations for which a valid permit existed when the land came under protection of the law.

OSM Finding: We have determined that this provision is substantively identical to, and therefore no less effective than, the Federal regulations at 30 CFR 761.11 and 30 CFR 761.12. Therefore, we approve OAC 1501:13–3–03.

OAC 1501:13–3–04: Procedures for Identifying Areas Where Mining Is Prohibited or Limited

In 2009, Ohio revised subsection (B) to clarify that an applicant who seeks a determination of valid existing rights on Federal lands within the boundaries of a national forest must submit its request to the Director of OSM for processing under 30 CFR subchapter F. In 2010, Ohio revised subsection (C) to clarify that this rule applies to applications for boundary revisions. It also expands the requirements for obtaining a road permit to include situations where the applicant proposes to relocate or close a public road. Finally, Ohio revised and reorganized subsection (D), which sets distance limitations from occupied dwellings, and waivers thereof, to eliminate redundancy.

OSM Finding: We have determined that the provisions in this section are substantively identical to, and therefore no less effective than, counterpart portions of the Federal regulations at 30 CFR part 761 (requiring OSM review for Federal lands within the National Forest System); 761.14 (requiring process for proposals to relocate or close public roads); 761.15 (waiver of distance limitations from occupied dwellings); and 761.17(a) (requiring regulatory authority to review applications for boundary revisions). Therefore, we approve the revisions to OAC 1501:13–3–04.

OAC 1501:13–4–02: Requirements of Coal Exploration

In 2010, Ohio revised subsection (A), which concerns written notices of intent for coal exploration operations, to remove the clause specifying that the requirement applies to those operations involving the removal of 250 tons of coal or less. Ohio also revised subsections (D) and (F), which concerns coal exploration permits, to add paragraphs requiring that, for any area where mining is prohibited or limited under OAC 1501:13–3–03, the application to conduct coal exploration must include a demonstration that the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for coal mining operations, to the extent technologically and economically feasible. The new paragraphs also require that the application must include documentation of consultation with the owner of the feature causing the land to come under the protection of unsuitable for mining and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under such protection. Lastly, the new paragraphs require that, before making a finding, DMRM must provide reasonable opportunity to the owner of the feature causing the land to come under such protection and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection, to comment on whether the finding is appropriate.

OSM Finding: Ohio's regulation at OAC 1501:13–4–02 addresses the Federal implementing regulations at both 30 CFR 772.11, which concerns notices of intent (NOI) for exploration operations removing 250 tons of coal or less, and section 772.12, which concerns permits for exploration operations that remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations. In 1983, OSM attempted a revision to 30 CFR 772.11 that would have effectively required an NOI for coal exploration operations removing 250 tons of coal or less only if such operation would also substantially disturb the natural land area. *See* 53 FR 52942 (Dec. 29, 1988). That revision was challenged in Federal court, was found to be an unsupported departure from the previous rule and was later suspended by OSM. Id. (citing *In re: Permanent Surface Mining Regulation Litigation (II),* No. 79–1144 (D.D.C. July 15, 1985) and 51 FR 41961 (Nov. 20, 1986). In 1988, OSM removed the reference to the land being substantially disturbed, noting that operators should not be in a position to make their own determination of whether their operations substantially disturb the natural land surface, and that regulatory authorities should therefore be informed of all exploration occurring within their jurisdictions. 53 FR at 52943. Ohio, on the other hand, has a differently structured regulation but effectively a similar result. Ohio eliminated the reference to 250 tons of coal from its requirement to file an NOI, but it still exists in the requirement to obtain a coal exploration permit. Ohio also retained references to the substantial disturbance of land surface. Therefore, the version of Ohio's regulation that remains requires a coal exploration permit for operations that intend to remove more than 250 tons of coal, substantially disturb the natural land surface, or involve lands designated as unsuitable. Operations not meeting these triggers may proceed only under an NOI, but all operations must at least have met that requirement. In 2018, Ohio removed the reference to the substantial disturbance of land from the subsection (A) subtitle to further avoid confusion. To the extent that Ohio requires operations that substantially disturb the natural land surface to receive a coal exploration permit where the Federal regulations would only require an NOI, Ohio has that discretion. For these reasons, we have determined that the amendments to the provisions in this section are no less effective than the Federal regulations at 30 CFR 772.11 and 772.12. Therefore, we approve the revisions to OAC 1501:13–4–02, including those later made in 2018 which do not substantively affect the requirements.

OAC 1501:13–4–03: Permit Application, Requirements for Legal, Financial, Compliance and Related Information

This provision was revised to allow submission of either the employer identification number or the last four digits of the social security number for each individual who is identified as having ownership or control in the permit application. This rule was also revised to clarify that right of entry information must be provided for the permit and shadow areas of underground mines.

OSM Finding: We approved changes to this regulation in 2015 following a complete side-by-side analysis with the counterpart Federal regulations at 30 CFR part 778. *See* 80 FR 63120 (Oct. 19, 2015). We also discuss minor revisions Ohio made to this regulation in 2016 in our discussions of statutory revisions to ORC 1513.02 and 1513.073, above. Subsequent revisions Ohio made to this regulation in 2016, 2018, and 2020 are discussed in other state program amendments docketed at SATS Nos. OH–258–FOR, OH–260–FOR, and OH–263–FOR, respectively. To the extent we have not specifically addressed Ohio's requirement to provide right of entry information for shadow areas, we note that although the Federal regulations do not specifically require right of entry information for shadow areas of underground mining operations, Ohio has the authority and the discretion to require more information than required by Federal law and regulations. We find that the revisions to this provision are no less effective than the Federal regulations at 30 CFR 778.15.

OAC 1501:13–4–04: Permit Application Requirements for Information on Environmental Resources

In 2009, Ohio revised subsections (D) (groundwater information) and (E) (surface water information), by adding aluminum and sulfates to the list of parameters for which an applicant must analyze water samples. In 2010, Ohio further revised subsections (J) and (K) to distinguish between the roles of engineers and surveyors in preparing maps. In 2016, Ohio made significant revisions to this section by including new provisions about seasonal variation of groundwater and surface water and moving the mapping provisions of subsections (J) and (K) to OAC 1501:13–4–08. Those revisions are under our consideration as a separate program amendment docketed at SATS No. OH–258–FOR.

OSM Finding: The Federal regulations at 30 CFR 780.21(b) do not require sulfates and aluminum as sampling parameters for groundwater or surface water, but they do not prohibit the regulatory authority from requiring additional parameters. Ohio asserted in its rulemaking that it had already been requiring analysis to include aluminum and sulfates pursuant to its authority to require ''other such information'' DMRM determines is relevant. *See* OAC 1501:13–4–04(D)(4)(d)(x) and (E)(2)(j). For Ohio's revisions about the distinction between surveyors and engineers, to avoid confusion, we will defer our discussion of these revisions until our review of their move to OAC 1501:13–4–08 in OH–258–FOR. Therefore, we approve the revisions to OAC 1501:13–4–04(D) and (E) related to the addition of aluminum and sulfates as additional parameters.

OAC 1501:13–4–05: Permit Applications; Requirements for Legal, Financial, Compliance and Related Information

In 2009, Ohio deleted from subsection (A)(2)(b) part of a parenthetical indicating that in order to retain certain facilities they must be necessary for the postmining land use and instead indicated that they need only be approved by DMRM. In 2016, following discussions with OSM, Ohio restored the requirement that the facilities must be necessary for postmining land use, while keeping the requirement that such facilities be approved by DMRM. Ohio also added subsection (A)(3) to include a requirement that it is the applicant's responsibility to provide information in the detail necessary for DMRM to determine the estimated cost to reclaim the site in the event of forfeiture of the performance security. Such information must be sufficient to determine the greatest potential reclamation cost liability to the State and include any other operational detail required by DMRM that may affect the cost. Ohio also revised subsection (B)(1)(d) to remove an applicant's ability to demonstrate that existing structures meet interim program performance standards because Ohio had previously removed its interim program regulations. Ohio revised subsection (H)(1)(a)(i) to clarify that detailed design plans for each proposed siltation structure, water impoundment, and coal mine waste bank, dam, or embankment must be certified by an engineer and cannot just be prepared under the direction of an engineer. Finally, Ohio deleted redundant language at subsection (M)(1).

OSM Finding: Because Ohio restored the requirement that the facilities proposed for retention be necessary for postmining land use in 2016, we need not address the original revision.

We find that the provision requiring the applicant to provide information for estimating the cost of reclamation is consistent with that which we discussed and approved above at ORC 1513.07(C), and we incorporate that analysis here. We have determined that the provision concerning existing structures is more stringent than the Federal regulations at 30 CFR 780.12(a)(4), which still allows existing structures to meet interim program standards, and is therefore consistent with the Federal regulations. We have determined that the provision about design plan certification is no less effective than the Federal regulations at 30 CFR 780.25(a)(1), which requires the plans to be certified. Therefore, we approve the revisions to OAC 1501:13–4–05.

OAC 1501:13–4–06: Permit Applications, Revisions, and Renewals, and Transfers, Assignments, and Sales of Permit Rights

In 2010, Ohio revised subsection (A)(3) to state that an application is deemed complete unless DMRM notifies an applicant within 14 business days of application submission that the application is incomplete and provides written notification that identifies the deficiencies in the application.

OSM Finding: Ohio made this revision to conform its regulations to the statutory revision at ORC 1513.07(E)(1), discussed above, which we do not approve. We incorporate our findings for that provision here and do not approve the revision to OAC 1501:13–4–06(A)(3) for the same reasons.

OAC 1501:13–4–07: Annual Reports

Ohio revised the requirements that the permittee file information with DMRM thirty days after each anniversary date of the issuance of a coal mining and reclamation permit to account for the new ABS and full-cost performance security methods, which use the terms *incremental area* and *incremental mining unit,* respectively, for different purposes. The revisions clarify that estimates of acreages are required for both the permit area and any incremental area or incremental mining unit; remove requirements to provide surety-specific information that Ohio no longer collects; requires the annual map to be prepared by or under the direction of a professional surveyor, eliminating the option for an engineer to prepare it; requires the annual map to include the boundaries of each incremental mining unit affected during the permit year for which the annual report is filed and for all preceding permit years, replacing the requirement to delineate the perimeter of the area affected during the permit year that is to be re-affected during the next permit year; requires the annual map show the incremental area for the reporting year and all preceding years. Ohio also removed the requirement that the map be shaded in various colors, if applicable, for the types of bonds posted for each area of the permit and if more than one surety was procured and added that within 30 days after the completion of mining operations on a permit, a final report must be filed with DMRM.

OSM Finding: We have determined that the provisions in this section have no direct Federal counterpart but are not inconsistent with the Federal regulations at 30 CFR 780.14(b)(3), which requires operation plans and maps to show each area of land for which a performance bond will be posted. The revisions are also consistent with Ohio's purposes under its ABS and full-cost bonding system, and the definitions of *incremental area* and *incremental mining unit* described above at ORC 1501:13–1–02. We incorporate those findings here. Ohio is merely outlining the requirements for an annual report. Therefore, we approve the revisions to OAC 1501:13–4–07.

OAC 1501:13–4–09: General Map Requirements

Ohio revised its general map requirements to clarify that acreage figures must be reported or estimated to the nearest 1/10th of an acre and to state that professional surveyors, not engineers, must certify the maps unless the map includes the only depiction of a design element for proposed features, in which case a professional engineer must also certify the map.

OSM Finding: We have determined that the provisions in this section are no less effective than the Federal regulations at 30 CFR 779.24, *Maps: General requirements.* Ohio goes beyond the map requirements in the Federal regulations to add additional requirements about which professionally licensed professions are required to certify maps pursuant to State law. These revisions also add additional requirements by specifying the decimal accuracy required on the maps. As these changes are consistent with the Federal regulations, we approve the revisions to OAC 1501:13–4–09.

1501:13–4–13: Underground Mining Permit Application Requirements for Information on Environmental Resources

OSM Finding: Ohio made the same revisions to this rule that it made to OAC 1501:13–4–05, discussed above, adding aluminum and sulfates as testing parameters, and clarifying the roles of engineers and surveyors. In 2016, Ohio also moved the map and plan provisions from this section to OAC 1501:13–4–08, which will be addressed in a separate program amendment at SATS No. OH–258–FOR. Therefore, we incorporate the findings from above and approve the revisions to OAC 1501:13–4–13(D) and (E) related to the addition of aluminum and sulfates as additional parameters and defer the remainder to our decision on OH–258–FOR.

OAC 1501:13–4–14: Underground Mining Permit Application Requirements for Reclamation and Operations Plans

Ohio revised this section in the same manner it revised OAC 1501:13–4–05, discussed above, with two additional revisions unique to underground mines. First, we incorporate our discussion of retaining existing structures, the estimated cost of reclamation, interim standards, and redundant language from that provision here. Here, Ohio also revised its mapping provisions at subsection (M) to replace ''areas above underground workings'' and ''underground workings'' with the term *shadow area,* defined at OAC 1501:13–1–02(ZZZZZ), and requires the map to show the *angle of draw,* a term defined at OAC 1501:13–1–02(H), both terms discussed and approved.

OSM Finding: We incorporate our findings about the retention of existing structures, estimated cost of reclamation, and interim standards from OAC 1501:13–4–5 here. We have determined that the provision concerning maps of the shadow area that show the angle of draw is no less effective than the Federal regulations at 30 CFR 784.20, *Subsidence control plan,* and consistent with our approval of the defined terms *shadow area* and *angle of draw* from OAC 1501:13–1–02, which we also incorporate here. Therefore, we approve the revisions to OAC 1501:13–4–14.

OAC 1501:13–4–15: Authorization To Conduct Coal Mining on Pollution Abatement Areas

In 2009, Ohio revised this rule to replace the term *bond* with *performance security,* the terms *operator* and *applicant* with the term *permittee,* where applicable, and made other minor editorial revisions. In 2010, Ohio codified revisions it had originally proposed in 2003, with some modifications, as well as additional substantive and minor revisions. Ohio revised subsection (A), *Applicability,* to clarify that applicants who seek authorization to conduct coal mining operations on certain previously mined areas under this rule do so with modified effluent limitations of a remining NPDES permit. Ohio revised subsection (C)(2), concerning the data necessary to determine baseline pollution load, to require that sampling locations be selected from among (instead of 'including, but not limited to') all surface-water bodies, groundwater sites, and all discharges from the pollution abatement area into surface water bodies. Ohio also added a reference to the new exception to baseline sampling at subsection (C)(4), discussed below, and clarified that DMRM may increase the number of samples and/or lengthen the sampling period. Ohio added subsections (C)(3) and (C)(4) to provide new exemptions from meeting numeric requirements of total suspended solids and settleable solids, or numeric effluent limitations, respectively. Ohio also added total aluminum to the required sampling program at subsection (C)(5) and eliminated the requirement that the permittee notify DMRM before and upon completion of each step of the abatement plan formerly at subsection (E)(3). Ohio repurposed subsection (F)(1), which required that non-pre-existing discharges be treated, to state that all pre-existing discharges commingled with active mining wastewater must be treated until the pollution abatement plan is implemented and the commingling has ceased. Ohio revised subsection (F)(2) to clarify that EPA's regulations at Appendix B of 40 CFR part 434 will be used to determine whether numeric effluent limitations established in the remining NPDES permit are exceeded, and revised subsection (F)(4) to state that sampling sites will be determined by DMRM, rather than proscribing that they be acquired at the farthest downstream discharge point of any, or any series of, sedimentation ponds.

OSM Finding: In 2004, we approved Ohio's proposed provisions at subsections (C)(3), (C)(4)(a) and (C)(4)(b) (formerly proposed as subsections (C)(2)(a)–(c)), the elimination of subsection (E)(3), and the revisions to subsection (F)(1). *See* 69 FR 57640, 57643 (Sept. 27, 2004). We incorporate those findings herein and note only that Ohio made minor editorial revisions to account for the reordering and reference their relation to other provisions. Ohio also omitted ''a pre-existing discharge that is too large to adequately assess via collection'' from its original list of examples of when collection of samples to establish baseline pollution load is infeasible to conform with EPA's regulation at 40 CFR 434.72(b)(2). Concerning the remaining revisions, we discuss below that EPA, which is primarily responsible for establishing effluent limitations, concurred in the proposed changes after finding that they comport with the Federal Water Pollution Control Act (*i.e.,* the Clean Water Act) and its implementing regulations. *See* Administrative Record Number OH–2185–84. We note that Ohio's revisions generally clarify or reflect Ohio's existing implementation of its program and are within Ohio's discretion to require, such as sampling site selection or including total aluminum as a sampling parameter. Therefore, we find that the revisions to OAC 1501:13–4–15 are in accordance with section 702(a) of SMCRA, which provides that nothing in SMCRA can be construed as superseding, amending or modifying the Clean Water Act or its regulations, and we approve them. In 2018, Ohio made additional revisions to this rule, particularly subsection (C)(5)(b), that we will address in a subsequent State program amendment.

OAC 1501:13–4–16: Requirements for Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

Ohio revised the provisions about the exemption for coal extraction incidental to the extraction of other minerals to clarify three of the five requirements: (1) the requirement that coal must be produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use was clarified to define that the term ''immediately below'' means that the coal to be mined must be located not more than three feet below the lowest other mineral to be mined; (2) language was added that other minerals mined in a mining area, but not in the stratigraphic column of coal removed, cannot be used to calculate cumulative production or cumulative revenue; and (3) language was added stating that augering of coal is not used as a mining method, except for permits issued before February 29, 1988, with approved mining plans that allowed the augering of coal.

OSM Finding: We have determined that the provisions in this section add further clarification to this exemption and narrow it in scope, and, though they have no direct Federal counterparts, they are therefore consistent with the Federal regulations at 30 CFR 702.14. We also understand that Ohio made these revisions to align the regulations with DMRM's Procedure Directive Inspection and Enforcement 2008–01 and, therefore, reflect Ohio's existing interpretation of this exemption. Therefore, we approve the revisions to OAC 1501:13–4–16.

OAC 1501:13–5–01: Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

In 2009, Ohio made several editorial corrections to this section and added the word ''significant'' before the word ''revisions'' in subsections (A) and (B) to clarify that public notice of the filing of applications is only required for significant permit revisions. In 2010, Ohio added subsection (D)(2) to mirror the 240-day permit decision timeframe added to ORC 1513.07, discussed above, and to elaborate that the days referenced therein are ''business days.''

OSM Finding: We have determined that Ohio's addition of the word ''significant'' to subsections (A) and (B) is consistent with the requirements in 30 CFR 773.6, *Public participation in permit processing,* which makes the same distinction, and is consistent with how Ohio was already implementing its program. We also incorporate our findings from our approval of the 240-day decision timeframe under ORC 1513.07, above, and note that whether Ohio interprets days as business days is immaterial to our analysis. Therefore, we approve these revisions to OAC 1501:13–5–01. We note that Ohio made subsequent revisions to this rule in 2016 and 2018, which we will address in separate program amendments docketed at SATS Nos. OH–256–FOR and OH–258–FOR.

OAC 1501:13–9–01: Signs and Markers

In addition to minor corrections and reorganization, Ohio revised this provision to eliminate strict distance limitations for perimeter markers, instead requiring that they be placed to clearly define the perimeter so that adjacent markers are visible by a person standing at any other marker along the perimeter.

OSM Finding: We have determined that this provision is no less effective than the Federal regulations at 30 CFR 816.11(d) that requires generally that the perimeter of a permit area be clearly marked before beginning surface mining operations. Therefore, we approve the revisions to OAC 1501:13–9–01.

OAC 1501:13–9–03: Topsoil Handling

Ohio revised subsection (B) to provide that DMRM may choose not to require the removal (for salvage) of topsoil for minor disturbances that (a) will occur at the site of small structures, such as power poles, signs, or fence lines, or (b) will not destroy the existing vegetation and will not cause erosion. Ohio also revised the final grading and replacement of topsoil requirements at subsection (C) to provide that final grading must follow the completion of backfilling and rough grading with a timeframe that will allow replacement of topsoil or approved resoiling materials to begin and be completed during either the current normal period for favorable planting or at the start of the first appropriate normal period for favorable planting following final grading, whichever occurs first. It also provides that resoiling must begin, continue reasonably uninterrupted, and be completed before the end of the normal period for favorable planting unless the permittee receives an extension of time limit because of climatic conditions. Concerning the final grading and replacement of topsoil and soil thickness provisions, Ohio revised this rule to provide that topsoil or approved alternative resoiling materials must be redistributed in a manner that achieves an approximately uniform, stable thickness when consistent with the postmining land use, contours, and surface water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit.

OSM Finding: The provision about minor disturbances is nearly identical to, and no less effective than, the Federal regulations at 30 CFR 816.22(a)(3). The provision about final grading and replacement of topsoil, though it has no direct Federal counterpart, is consistent with the Federal regulations at 30 CFR 816.100, requiring reclamation efforts occur as contemporaneously as possible, and 816.113, requiring disturbed areas to be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The provision about redistributed topsoil thickness is identical to, and no less effective than, the Federal regulations at 30 CFR 816.22(d)(i). Therefore, we approve the revisions to OAC 1501:13–9–03.

OAC 1501:13–9–06: Use of Explosives

Following our 2012 publication of Ohio's proposed changes to this rule, Ohio made additional significant changes in 2018, which it has yet to submit. Ohio has also recently notified us that it intends to further revise this rule in its upcoming 5-year rule review. Therefore, to understand all of Ohio's proposed revisions in concert with one another, we defer our decision on these revisions and await Ohio's forthcoming submission of updates to OAC 1501:13–9–06 to address all of Ohio's revisions at once in a subsequent program amendment.

OAC 1501:13–9–10: Training, Examination, and Certification of Blasters

In 2010, Ohio revised subsection (C)(1) to raise minimum training for blaster certification from 30 hours to 40 hours. Subsection (D)(1) was also revised to reflect that other agencies, boards, or institutions may provide certification according to agreements entered into by DMRM pursuant to subsection (A)(2). Additionally, subsection (D)(1) and related provisions were further revised to ensure that each person approved for certification receives a certificate suitable for office display and a wallet-size identification card. These documents must include the type of certification, the person's name, certification number and date of expiration, and the name and signature of the chief or the official of the authorized agency, board, or institution granting the certification.

Ohio also eliminated subsection (D)(2)(c), which instructed DMRM to prorate its continuing education hours requirement based on the expiration date of each blaster's certification for three years from April 15, 2004, the effective date of the rule. In 2018, Ohio created a limited type of certification for blasters who conduct small-scale blasting on industrial minerals mining permits issued under ORC Chapter 1514, reflected by additions or revisions at subsections (A)(4), (C)(1), (C)(5)(b), and (D)(2)(b). Ohio also removed the requirement at subsection (B) that DMRM conduct workshops. The training topics at subsection (B) were revised to include fumes and reference carbon monoxide and nitrogen oxides as examples of toxic gases covered. Additionally, subsection (C)(5)(a) was created, which allows a person seeking standard certification to take the examination after completing the required training and at least one of the two years of required blasting crew work. However, certification cannot be granted until the full requirement is met.

OSM Finding: Concerning the 2010 revisions, we have determined that they are consistent with the Federal regulations at 30 CFR 850.13, 850.14, and 850.15 which generally require States to promulgate regulations related to the training, examination, and certification of blasters to ensure their competence but does not directly proscribe specific minimum hours of training or what form the documents memorializing certification must take. Thus, this provision is consistent with the Federal regulations. Similarly, Ohio's elimination of the requirement to prorate continuing education hours is appropriate because the provision has expired by its own terms.

Concerning the 2018 revisions, we note that these revisions occurred after our 2012 public notice of this state program amendment. Nonetheless, we find that notice and public procedure under section 553 of the APA for approval of these revisions are impracticable, unnecessary, and contrary to public interest. *See* 5 U.S.C. 553(b)(B). Notification is impractical, unnecessary, and contrary to public interest because the revisions are either well consistent with the Federal regulations or do not pertain to SMCRA-regulated activities. Ohio's expansion or elaboration on the training topics required by 30 CFR 850.13(b), elimination of workshops, and creation of minimum requirements a blaster must meet before taking the examination, are at least neutral to, if not more stringent than, any requirement required by 30 CFR part 850. Ohio's creation of a limited type of certification applies only to industrial minerals mining permits, which are not regulated by SMCRA, and, therefore, those provisions do not require our approval. Rather than further delaying our decision on these revisions that have no obvious discernable impact on Ohio's approved program, we approve all of these revisions to OAC 1501:13–9–10.

OAC 1501:13–9–13: Contemporaneous Reclamation

In 2009, Ohio revised this section to add the word *highwall* where auger mining was referenced and make general revisions reflecting its new system for performance security, including a reference to its new rule at OAC 1501:13–7–05.1 (release of full-cost performance security). In 2010, Ohio revised subsection (A) to require that final grading and replacement of topsoil occur in accordance with OAC 1501:13–9–13, and that mulching, seeding, and planting follow resoiling as soon as practicable to minimize erosion. Ohio also revised subsection (A) to provide that the normal expected time for tree planting is March through April, and that, for forestry reclamation, end-dumped soil placed after April must not be planted with trees until the spring. This revision also allows mulching or seeding to occur when trees are planted or in the fall to help minimize herbaceous competition. Finally, Ohio added subsection (A)(9) requiring permittees to seek a permit revision for additional time for backfilling and rough grading, subject to certain minimum criteria that must be provided to justify additional time.

OSM Finding: We have determined that the 2009 revisions were editorial and did not substantively change Ohio's requirements. Concerning the 2010 revisions, we note that Ohio made these revisions so that this regulation would align with Ohio's existing interpretation and practice in DMRM's Procedure Directive Regulatory 08–02, *Contemporaneous Reclamation.* Provisions in this section are no less effective than the Federal regulations at 30 CFR 816.100, which requires generally that backfilling, grading, topsoil replacement, and revegetation occur as contemporaneously as possible, without more specificity. Here, Ohio expands on the requirements of this regulation by providing timeframes for completion of each stage and requires a formal process (permit revision) to request and justify additional time. The Federal regulations at 30 CFR 816.113 also leave room for the regulatory authority to determine the normal period for favorable planting based on local conditions and the plants selected. Therefore, we approve the revisions to OAC 1501:13–9–13.

OAC 1501:13–14–02: Enforcement

In 2009, Ohio revised this provision to add subsection (A)(9), which states that when DMRM issues a failure to abate cessation order for a violation of the contemporaneous reclamation requirements and the performance security was provided together with reliance on the Reclamation Forfeiture Fund, DMRM may require the permittee to increase the amount of performance security for the permit from $2,500 per acre to $5,000 per acre of land. In 2010, Ohio further added paragraphs (a) through (e) to implement subsection (A)(9). These paragraphs provide that: (a) if the violation relates to backfilling and/or grading and not corrected within 30 days from the issuance of the cessation order, DMRM may order that the performance security be increased within ten days in an amount of $5,000 per acre; (b) for all other contemporaneous reclamation violations, if the violation is not corrected within 30 days from the issuance of the cessation order, DMRM may order that performance security be increased within ten days in any amount not to exceed a total of $5,000 per acre; (c) if DMRM orders the permittee to increase the amount of performance security, it will also order the permittee to show cause why its performance security will not be forfeited pursuant to OAC 1501:13–7–06; (d) if DMRM orders the permittee to increase the amount of performance security, the increased performance security will remain in effect for the permit, including all future acreage of the permit, until DMRM determines that the amount of performance security may be reduced; and (e) a reduction in the amount of performance security under paragraph (d) will not be considered release of performance security and therefore not subject to ORC 1513.16(F), proscribing the procedure for release of performance security.

OSM Finding: Ohio added subsection (A)(9) to mirror the statutory addition at ORC 1513.08(E), which we address and approve above. We incorporate those findings here. Ohio added paragraphs (a) through (e) to help implement the provision. We note that ORC 1513.08(E) provides general discretion to DMRM to increase performance security in these situations, and that nothing in paragraphs (a) through (e) exceed that discretion. Concerning the reduction of performance security, we note that ORC 1513.08(C)(2) requires $2,500 per acre of performance security for sites participating in the bond pool. We read these provisions together to conclude that a reduction under OAC 1501:13–14–02(d) would not include a reduction below the amount otherwise required by ORC 1513.08(C)(2). For these reasons, we approve the revisions to OAC 1501:13–14–02.

IV. Summary and Disposition of Comments

A. Public Comments

We asked for public comments and requests for public hearings or meetings about the amendment. We received responses from one individual, and individuals representing three organizations: Save Our Rural Environment (SORE); Citizens for Pennsylvania's Future (PennFuture); and Ohio Environmental Council (OEC). The following summarizes the comments and testimony that were received.

Comment: An individual cited concerns about the long-term solvency of Ohio's Reclamation Forfeiture Fund and indicated that Ohio has not met its program condition at 30 CFR 935.11.

OSM's Response: We disagree that Ohio has not met the program condition described at 30 CFR 935.11. The provisions approved in this amendment include an increase on the severance tax that funds Ohio's bond pool, an expansion of the sources of funding for the bond pool, automatic severance tax increases if the bond pool falls below specified amounts, and the creation of an advisory board to recommend methods to increase the amount of the bond pool when needed. Additionally, the most recent actuarial study of the bond pool indicates that it has sufficient funding for Ohio to meet its reclamation obligations at any site that may be in default.

Considering the current account solvency and the mechanisms for adjusting bond pool income in response to future conditions, Ohio has demonstrated that its ABS can assure timely reclamation at all sites in default at any time. Therefore, we are removing the program condition at 30 CFR 935.11(h) and determining that Ohio has satisfied our concerns set forth in our 733 letter dated May 4, 2005.

Comment: Another commenter raised concerns about two provisions in the proposed amendment. They supported the approval of ORC 1513.076 and requested the disapproval of ORC 1513.07(E)(1), asserting that 14 days would not provide sufficient time for the State to determine the administrative completeness of an application.

OSM's Response: We agree that ORC 1513.076 should be approved. We also agree that 14 days is not always sufficient for Ohio to determine that an application is administratively complete, and, as we explained above when we disapproved subsection (E)(1), the automatic presumption of administrative completeness without the affirmative response from DMRM is not consistent with the Federal regulations.

Comment: A commenter opined that ORC 1513.076 should be more specific as to when the chief should coordinate with other branches of the Ohio regulatory apparatus in order to avoid improper permit approvals. Similarly, the commenter also objected to OAC 1501:13–1–10 because they alleged that it would shift the cost of examining records to the public.

OSM's Response: As we noted above, ORC 1513.076 has no direct counterpart in the Federal regulations. However, we found that it is not inconsistent with the Federal regulations at 30 CFR 731.14(g)(9), which requires a State to provide a narrative description of its permit coordination system as part of its submission to have its State program approved by OSM and is similar to 30 CFR 773.5, which requires coordination between different agencies to avoid duplication for the review of various Federal wildlife and historic preservation laws. That regulation does not specify how or when agencies should coordinate, only that agencies avoid duplication. Ohio's proposed amendment is no less effective than these regulations and establishes a joint task force to ensure proper implementation.

The deleted portions of OAC 1501:13–1–10 that are the subject of the commenter's concerns were reinstated as part of the subsequent program amendment OH–258–FOR, and we will address them in that amendment.

Comment: A commenter indicated that several new or amended provisions in the ORC, OAC, and several of Ohio's guidance documents were omitted from the proposed rulemaking notice that appeared in the **Federal Register** on February 14, 2012. The commenter acknowledged that some of the changes to these provisions may be ''clerical in nature,'' but suggested that we publish the name and number of each provision or guidance document nonetheless.

OSM's Response: Except as discussed in response to other comments below, proposed revisions to the statutory and regulatory sections noted by this commenter are either editorial in nature, which do not require our approval, or they are addressed in other program amendments, such as that docketed at SATS No. OH–254–FOR. Our approval of any section or subsection of Ohio's statutes or regulations in this amendment does not apply to any substantive changes not specifically accounted for in this **Federal Register** notice. In reviewing this amendment, we also made note of all outstanding substantive revisions and are coordinating with Ohio to ensure necessary submissions occur. The guidance documents to which the commenter refers are not a part of this program amendment.

Comment: A commenter objected to provisions in ORC 1513.02(J) that allow the chief to establish rules to implement a state programmatic general permit from USACE, alleging that Ohio lacks the capacity to comply with a general permit, and asserts that it was not published in the proposed rulemaking notice.

OSM's Response: This section, which was included in the proposed rulemaking notice at 77 FR 8185, 8188 (Feb. 14, 2012), is not a self-implementing, enforceable provision. As we discuss above, this provision merely authorizes DMRM to undertake a future potential rulemaking. If and when Ohio uses this authority, we will evaluate that rulemaking under 30 CFR part 732.

Comment: The commenter objected to ORC 1513.07(E)(2) and OAC 1501:13–4–06(A)(3), which deem a permit application to be complete within 14 days of its submission, asserting that does not allow for sufficient time for a review to satisfy section 510 of SMCRA, and that DMRM improperly extended ''days'' from Ohio's statute to ''business days'' in its regulations.

OSM's Response: We generally agree with the commenter's assertion that this provision is not in accordance with SMCRA and is not consistent with the Federal regulations; thus, as explained above, we have disapproved it. We note, however, that while the SMCRA regulations typically refer to calendar days, *see* 30 CFR 700.15 (Computation of time), whether a State's rule implementing a particular timeframe conflicts with a State statute is a question of State law that is outside of our purview. Our review is confined to determining whether the provision is in accordance with SMCRA and consistent with the Federal regulations.

Comment: A commenter objected to ORC 1513.07(I), which they noted was omitted from the proposed rulemaking notice, and OAC 1501:13–5–01 and 1501:13–14–05, which they asserted contravene SMCRA's requirement for permit decisions to occur within 60 days of an informal conference. They also contended that Ohio's 240-day decision window for decisions without an informal conference is unreasonably long.

OSM's Response: As we discussed above, we do not interpret Ohio's requirement as allowing Ohio to issue its decision on a permit application more than 60 days following an informal conference. Rather, we interpret these provisions as simply requiring DMRM to notify a permit applicant if DMRM anticipates that a permit decision will not occur before 240 days from the time that the permit application is determined to be complete. We acknowledge that this timeframe will not likely be met in situations where an informal conference is held, which should typically conclude within approximately 170 days from when the permit application is determined to be complete. Nonetheless, delays may occur by mutual consent of all interested parties, which may make Ohio's 240-day requirement relevant. We note in our findings that we will monitor Ohio's program to ensure DMRM is implementing the 60-day requirement. We also note in our findings that for permits that do not involve an informal conference, 240 days is a reasonable timeframe considering the complexity of some permit applications, and no part of Ohio's provisions compel a particular permit decision (*i.e.,* a deemed approval). Timely and efficient permit processing benefits all parties. Finally, we note that we did erroneously omit a description of the change in ORC 1513.07(I) from our proposed rulemaking notice at 77 FR 8185 (Feb. 13, 2012). However, we did sufficiently describe Ohio's regulatory revisions implementing this provision, *see* 77 FR at 8193 and 8196, and, therefore, we find that the omission of a separate description of ORC 1513.07(I) is harmless error because it is a logical outgrowth of the proposed rule notice.

Comment: A commenter asserted that DMRM does not adequately enforce ORC 1513.07(E), which relates to written consent by the landowner for right-of-entry. The commenter raised objection to the changes to these provisions themselves.

OSM's Response: OSM addresses issues related to the implementation and enforcement of a State's program through the processes outlined in 30 CFR part 733, which is beyond the scope of this program amendment.

Comment: A commenter opined that the proposed rulemaking notice of February 12, 2012, omitted the following substantive additions of defined terms: *best management practices, knowing, pre-existing discharge, transfer, assignment or sale of permit rights, violation, violation notice,* and a reference to the Federal rules.

OSM's Response: All of these terms were included in other program amendments, which were released for public notice and comment. We approved the terms *best management practices,* and *pre-existing discharges* in the program amendment docketed at SATS No. OH–248–FOR. *See* 69 FR 57640 (Sept. 27, 2004). We approved the terms *knowing, violation,* and *violation notice* in the program amendment docketed at SATS No. OH–254–FOR. *See* 80 FR 63120 (Oct. 19, 2015). We included revisions to the term *transfer, assignment, and sale of permit rights* in the program amendment docketed at SATS No. OH–262–FOR, which we consolidated with this notice. Concerning the reference to the Federal rules, Ohio subsequently eliminated these references from its definitions and instead migrated them to OAC 1501:13–4–14, which the commenter later notes is important and encourages its approval.

Comment: A commenter asserted that Ohio's provision allowing remining operations to be exempt from numeric limitations for total suspended solids and settleable solids at OAC 1501:13–4–15(C)(3) must require concurrent approval of the Ohio EPA.

OSM's Response: As we discussed above, we approved this provision in 2004. *See* 69 FR 57640. We note that this provision is subject to OAC 1501:13–4–15(D)(5), which provides that ''no authorization may be granted under this rule until a remining NPDES permit has been issued by the Ohio environmental protection agency and a copy of the remining NPDES permit has been provided to the chief.''

Comment: Another commenter raised concerns that the alternative financial security for long-term discharge treatment as described in ORC 1513.16(F)(8) could be inconsistent with SMCRA performance security standards found at 30 CFR 800.12, and bond release regulations found at 30 CFR 800.40, if it is interpreted as terminating Ohio's jurisdiction for areas where ongoing water treatment or water supply replacement is required. The commenter also opined that the termination of jurisdiction language of ORC 1513.16(F)(9) is inconsistent with 30 CFR 700.11(d)(1) by declaring that termination occur at final bond release instead of retaining discretion in DMRM to separately terminate jurisdiction.

OSM Response: As noted in our findings above, we approve the use of alternative financial securities, including trust funds, as alternative bonding mechanisms. However, we agree with the commenter's concerns about the possible interpretation of subsection (F)(8) and (F)(9). We note in our findings that Ohio subsequently defined *alternative financial security* as trust funds and similar financial mechanisms. We have limited our approval of Ohio's definition only to trust funds because those instruments are further defined and conditioned as a form of collateral bond in Ohio's regulations. Therefore, our finding makes clear that final bond release, for the purpose of termination of jurisdiction under subsection (F)(9), will not occur until all land reclamation is completed and all pollutional discharges are eliminated or otherwise cease to exist that would result in release of any remaining performance security including any alternative financial security.

We disagree that the termination of jurisdiction language of ORC 1513.16(F)(9) is less effective than SMCRA and 30 CFR 700.11. 30 CFR 700.11 gives regulatory authorities the ability to terminate jurisdiction upon release of the performance bond and does not provide any conditions for which a regulatory authority may not terminate jurisdiction after release of a performance bond. This section of the Federal regulations is intended to allow a regulatory authority to terminate jurisdiction after all performance bond releases, as Ohio has done here. Under Ohio's approved program, it is unnecessary to retain discretion for the termination of jurisdiction separate from the discretion for the final release of performance security for the same reason we declined to exercise that discretion in the rulemaking for the Tennessee program cited by commenter. *See* 72 FR 9616, 9627–28 (Mar. 2, 2007). Our decision to acknowledge trust funds for long-term treatment as either collateral bonds or alternative bonding systems under section 509 of SMCRA, 30 U.S.C. 1259, means that the regulatory authority retains jurisdiction over the treatment site until that too meets all the requirements imposed by the applicable regulatory program and the trust is terminated, constituting ''release of the performance bond fully'' under 30 CFR 700.11(d)(1)(ii). Ohio has also retained the mandatory Federal requirement that the regulatory authority may reinstate jurisdiction if it has found that release of the performance bond occurred was based on fraud or other misrepresentations.

Comment: A commenter contended that the proposed rule neither provides adequate funding for the ABS nor provides adequate funding for Ohio's oversight of surface mining. The commenter also asserted that ORC 1513.08(E) fails to require DMRM to adjust the amount of bond, as required under section 509(e) of SMCRA, 30 U.S.C. 1259(c), and that ORC 1513.08(C) improperly limits expenditures from the bond pool to the estimated cost of reclamation rather than the actual cost of reclamation. Finally, the commenter alleged that the creation of the Reclamation Forfeiture Fund Advisory Board creates unnecessary, costly, and inefficient bureaucracy, that the Board's makeup and duties conflict with SMCRA's regulations about the restrictions on financial interests of State employees under 30 CFR part 705, and conflicts with ODNR's designation as the regulatory authority.

OSM Response: Concerning the text of ORC 1513.08(E), Ohio revised this provision again through SB 386 of 2009 to require DMRM adjust the bond when the acreage changes or the cost of reclamation changes. Concerning the text of ORC 1513.08(C), we agree generally that the expenditures from the bond pool cannot be limited to the difference between the amount of flat-rate bond and DMRM's estimated cost of reclamation if that estimate turns out to be less than the actual cost to meet all requirements of the approved program, the permit, and the reclamation plan. Accordingly, we approved this provision insofar as Ohio implements its approved regulations that allow DMRM to adjust the estimated cost at any time, including after forfeiture, to accurately reflect final costs to complete reclamation. In that context, we interpret Ohio's provision as ensuring that money in the bond pool is not used to complete work in excess of that necessary to satisfy SMCRA's requirements.

Next, we disagree that the amendment does not provide adequate funding for the ABS. Please see our response to this comment that we previously addressed in this section for more detail. We also disagree that Ohio's funding of ODNR is currently inadequate. We regularly monitor and inspect surface mining activity and regulatory authority effectiveness and intervene as required.

Concerning the RFFAB, while we agree that ORC 1513.182 gives the RFFAB a role that is more than simply advisory (*i.e.,* the power to adjust the reclamation tax through rulemaking), which raises conflict of interest concerns, we disagree that the creation of a RFFAB generally is inconsistent with SMCRA and its implementing regulations. We do not approve ORC 1513.182(E)(3), which authorizes the RFFAB to adjust the reclamation tax and refer to our discussion of that provision above. However, as we have held in other jurisdictions, the creation of an advisory board with the directive to analyze and respond to the solvency of the Reclamation Forfeiture Fund will improve Ohio's ability to fulfill the conditions of 30 CFR 800.11(e). *See* 66 FR 67446 (Dec. 28, 2001) (approving of similar bond pool advisory board in West Virginia). SMCRA is otherwise silent on how States may choose to fulfill those conditions. Further, SMCRA tasks OSM with oversight of State coal mining regulatory programs, not particular State agencies, and does not prevent us from recognizing more than one State agency or entity involved in carrying out the State's program. *See* 30 U.S.C. 1211(c) (Duties of Secretary), and 30 U.S.C. 1291(26) (defining *State regulatory authority* as that with *primary* responsibility at the State level for implementing SMCRA). As other comments point out, the Ohio Environmental Protection Agency also has some role in Ohio's SMCRA program.

B. Federal Agency Comments

We requested comments from the Mine Safety and Health Administration (MSHA), Environmental Protection Agency, Natural Resources Conservation Service, U.S. Fish and Wildlife Service, U.S. Department of Labor, and Advisory Council on Historic Preservation. We received a letter from MSHA dated August 22, 2011, Administrative Record ID Number OH–2185–64, stating that MSHA had reviewed the proposed amendment and had no comment. We received no comments from the other Federal agencies.

We also requested concurrence from the U.S. Environmental Protection Agency (EPA) by letter dated July 28, 2011, Administrative Record ID Number OH–2185–62, for provisions that could affect compliance with the Clean Water Act. We received a letter from the EPA dated August 8, 2011, Administrative Record ID Number OH–2185–63, stating that the EPA forwarded the request for concurrence to its Chicago regional office for review. We sent another request for concurrence to the EPA Chicago regional office on December 6, 2012, Administrative Record ID Number OH–2185–74. We spoke by telephone with EPA Chicago staff on November 15, 2017, as a follow up to our request for concurrence for the proposed amendment.

We received a letter from the EPA dated July 5, 2018, Administrative Record ID Number OH–2185–84. The EPA concurred that the proposed changes to the Ohio program comport with the Clean Water Act and its implementing regulations. The EPA determined that only the proposed changes to OAC 1501:13–4–04, 1501:13–4–13 and 1501:13–4–15 are within its purview and concurred without comment on the proposed changes to OAC 1501:13–4–04 and 1501:13–4–13. The EPA provided additional discussion on its concurrence of OAC 1501:13–4–15. That discussion noted that EPA regulations at 40 CFR part 434 subpart G allows for modified NPDES permitting for preexisting discharges in coal remining operations provided that the operator selects Best Management Practices (BMPs) to reduce the pollution load from the pre-existing discharges. We agree with the EPA, and our finding on OAC 1501:13–4–15 is conditioned on comportment with these regulations.

The EPA also noted that the proposed changes to OAC 1501:13–4–15 would allow exemptions from numeric effluent limitations for pH, iron, manganese, total suspended solids and settleable solids when DMRM determines that setting numeric limitations is infeasible and when the remining operation would result in significant improvement to water quality. The EPA wrote that although the term 'non-numeric remining NPDES permit' does not appear in the CWA or Federal regulations, the proposed language in 1501:13–4–15 tracks well with 40 CFR 434 Subpart G. We agree with this determination, and our finding on 1501:13–4–15 reflects this determination.

V. OSM's Decision

Based on the above findings, we approve Ohio's PA–82 submitted March 6, 2007, and updated through February 14, 2012 (referenced as SATS No. OH–252–FOR) and PA 87 submitted April 11, 2019 (referenced as SATS No. OH–262–FOR) with the following exceptions.

Provisions Not Approved

1. We do not approve the presumption of administrative completeness 14 days after application submission, found at ORC 1513.07(E)(1) and OAC 1501:13–4–06(A)(3). The automatic presumption of administrative completeness without the affirmative response of the DMRM is less effective than 30 CFR 773.7, which requires the regulatory authority to issue written decisions on permits and places on the applicant the burden of establishing that the permit application complies with the regulatory program. Therefore, the proposed revisions to ORC 1513.07(E)(1) and OAC 1501:13–4–06(A)(3) are less stringent than SMCRA and its implementing regulations and cannot be approved.

2. We do not approve that provision of ORC 1513.08(J) and OAC 1501:13–7–03(B)(11)(b) related to permittees who have provided performance security in accordance with ORC 1513.08(C)(2). The procedures for the replacement of flat-rate bonds due to the insolvency of the surety or related financial institution conflict with the Federal regulations that require replacement bonds be obtained within 90 days with no exception for alternative bonding systems. Although Ohio seeks to revise its program to allow the operator to partially replace the bond within 90 days and the balance of the remaining bond being provided by the bond pool within one year, we require a complete replacement of the bond within 90 days. If Ohio implements their program allowing the bond pool to supplement the replacement bond, an undue risk on the solvency of Ohio's bond pool may result.

3. We do not approve ORC 1513.182(E)(3) and that clause of ORC 5749.02(A)(8) that authorizes the RFFAB to adjust the rate of the bond pool tax. The authority to adjust the bond pool tax is one that may affect a RFFAB member's direct or indirect financial interest subject to the prohibitions under section 517(g) of SMCRA, and the Ohio program does not provide for recusal by those members under such circumstances.

Conditional Approvals

1. We approve the change at ORC 1513.07(E)(2)(e), concerning right-of-entry documentation, with the understanding that an applicant will demonstrate ownership of the mineral estate in such a situation, as required elsewhere in the Ohio program. If we determine, in the future, that Ohio is implementing this provision differently, we may require Ohio to submit an amendment to revise their regulatory program to reflect our understanding of this provision.

2. We also limit our approvals to ORC 1513.16 and OAC 1501:13–1–02(G) to ensure that ''alternative financial security'' refers to only the treatment trusts as we understand them through related revisions to Ohio's program that we approve herein and not other unknown financial vehicles. Similarly, we limited our approval of ''other'' forms of collateral bond in the definition at OAC 1501:13–1–02(DD) to those specifically referenced in the Federal regulations at 30 CFR 800.5. We have decided to limit our approval in this way rather than disapprove the relevant portions of these provisions in order to indicate that Ohio may add specific, additional financial instruments to these terms subject to our approval through the state program amendment process.

No Finding Issued

1. We are not issuing a finding for ORC 1513.29 (Council on unreclaimed strip mined lands) because these provisions were repealed by Ohio House Bill 471 (approved December 19, 2016), and we addressed it in SATS No. OH–259–FOR. See 89 FR 79436 (Sept. 30, 2024).

2. We are not issuing a finding for ORC 1513.371 (Mined land set-aside fund), repealed and later reenacted for a different purpose, because both iterations of this section relate to Ohio's AML program and not its approved coal mining regulatory program.

3. We are not issuing a finding for revisions to OAC 1501:13–1–10 (availability of records) because Ohio effectively reinstated this rule in its prior form in 2016, which is part of a program amendment we docketed at SATS No. OH–258–FOR. Therefore, we are not issuing a finding on these provisions and will otherwise address this rule in that amendment.

4. We are not issuing findings for revisions to subsections (J) and (K) of OAC 1501:13–4–03 and 1501:13–4–13 (Environmental information for surface and underground coal mine permit applications, respectively). In 2016, Ohio further revised these subsections, which relate to mapping requirements, and moved them to other, new rules in Ohio's code. Those changes are reflected in a subsequent program amendment at SATS No. OH–258–FOR, and we will address them in that amendment.

5. We are not issuing a finding for revisions to OAC 1501:13–7–04 (Self-bonding) because Ohio indicated that it has repealed this rule in its entirety. We docketed that amendment at SATS No. OH–258–FOR, see 85 FR 26413 (May 4, 2020), and will address it in our decision on that amendment.

6. We are not issuing a finding for OAC 1501:13–9–06 (Use of explosives in coal mining and coal exploration operations) because Ohio made additional significant changes in 2018, which it has yet to submit, and recently notified us that it intends to further revise this rule in its upcoming 5-year rule review. Therefore, we defer our review of this rule until Ohio's next submission.

To implement this decision, we are amending the Federal regulations, at 30 CFR part 935, that codify decisions concerning the Ohio regulatory program. In accordance with the APA, 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.

Removal of Program Condition at 30 CFR 935.11(h).

We are removing the program condition at 30 CFR 935.11(h)(1), for the reasons described in Section D of our Findings and consider the conditions set forth in the 733 letter we issued to Ohio on May 4, 2005, addressed.

VI. Statutory and Executive Order Reviews

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

This rule would not result in 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 corresponding Federal regulations, including those that set minimum performance standards for alternative bonding systems.

Executive Order 12866—Regulatory Planning and Review and 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 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department has 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 writes 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 State regulatory program or to 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, in part, an amendment to the Ohio program submitted and drafted by the State and disapproves elements of the amendment only to the extent necessary to ensure that the State program is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the

Secretary pursuant to SMCRA. Therefore, this rule 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 the distribution of power and responsibilities between the Federal government and Tribes. The basis for this determination is that our decision on the Ohio program does not include Indian lands as defined by SMCRA or other Tribal lands and does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian Lands Program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

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.

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)).

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. The Federal regulations were also promulgated to provide flexibility to ensure the availability of surety bonding to small operators.

Congressional Review 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, including those that set minimum performance standards for alternative bonding systems, 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.

Ben H. Owens,

Acting 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.*

§ 935.11 [Amended]

■ 2. Amend § 935.11 by removing and reserving paragraph (h).

■ 3. Amend § 935.12 by adding paragraphs (c) through (h) to read as follows:

§ 935.12 State statutory, regulatory, and proposed program amendments not approved.

* * * * *

(c) The second sentence of ORC 1513.07(E)(1)—An application is deemed to be complete as submitted to the chief unless the chief, within fourteen days of the submission, identifies in the application in writing and subsequently submits a copy of a written list of deficiencies to the applicant.

(d) The last sentence of ORC 1513.08(J)—If the permittee provided performance security in accordance with division (C)(2) of this section, the permittee shall provide the replacement performance security within one year after receipt of notice from the chief, and, for a period of one year after the permittee's receipt of notice from the chief or until the permittee provides the replacement performance security, whichever occurs first, money in the reclamation forfeiture fund shall be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the chief.

(e) The first sentence of OAC 1501:13–4–06(A)(3)—Be deemed to be complete as submitted to the chief unless the chief, within fourteen business days of the submission, identifies deficiencies in the application in writing and sends a written list of the deficiencies to the applicant.

(f) OSM does not approve ORC 1513.08(J) and OAC 1501:13–7–03(B)(11)(b) related to permittees who have provided performance security in accordance with ORC 1513.08(C)(2).

(g) OSM does not approve ORC 1513.182(E)(3) and the clause of ORC 5749.02(A)(8) that authorizes the RFFAB to adjust the rate of the bond pool tax.

(h) The clause in the first sentence of ORC 5749.02(A)(8) reading—''. . . or in rules adopted by the reclamation forfeiture fund advisory board under section 1513.182 of the Revised Code. . .''

■ 4. In § 935.15, amend the table by adding an entry for ''March 6, 2007'' at the end of the table to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 6, 2007	8/7/2026	ORC 1513.01(W), .02, .07 (partial), .071, .073, .075, .076, .08 (partial), .081, .10, .13, .16, .17, .171, .18, .181, .182 (partial), .30, .372; ORC 5749.02 (partial), .11; OAC 1501:13–1–02, –1–03, –1–14, 13–3–01, –3–02, –3–03, –3–04, 13–4–01, –4–02, –4–03, –4–04 (partial), –4–05, –4–06 (partial), –4–07, –4–09, –4–12, –4–13 (partial), –4–14, –4–15, –4–16, 13–5–01, 13–7–01, –7–02, –7–03 (partial), –7–04, –7–05, –7–05.1, –7–06., –7–06.1, –7–08, 13–9–01, –9–03, –9–10, –9–13, 13–14–02, –14–05

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