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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 3500

[Docket No. R-95-1688; FR-3255-N-07]

#### Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Announcement of Availability of Software To Calculate Aggregate Accounting Adjustment

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of availability of software.

**SUMMARY:** On October 26, 1994, HUD published a final rule establishing escrow accounting procedures under the Real Estate Settlement Procedures Act. In the October 26 final rule the Department indicated that it would make available computer software that could be used in calculating the numerical value of the aggregate accounting adjustment for a last line in the 1000 series of the HUD-1 and HUD-1A. This notice describes the availability of this software on Internet or by requesting a diskette by mail or telephone.

**FOR FURTHER INFORMATION CONTACT:** William Reid, Research Economist, Office of Policy Development and Research, Room 8212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-0421 or (202) 708-0770 (TDD).

**SUPPLEMENTARY INFORMATION:** On October 26, 1994 (59 FR 53890), the Department published a final rule establishing escrow accounting procedures under Sections 6(g) and 10 of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(g) and 2609 (RESPA). This final rule was corrected on December 19, 1994 (59 FR 65442), and augmented on February 15, 1995 (60 FR 8811; correction published March 1, 1995, 60 FR 11194) by a further final rule that included commentaries, corrections, and illustrations. The February 15, 1995, rule also established an effective date of May 24, 1995, for both the October 26 and February 15 rules.

In the October final rule, at page 53895, the Department said it would

make available software that could be used in calculating the numerical value of the aggregate accounting adjustment for a last line in the 1000 series of the HUD-1 and HUD-1A. The software is available at no charge over Internet by accessing the "HUD Gopher" (see instructions below). Alternatively, a diskette containing the two files included on the Internet may be obtained by sending a request, with a check payable to HUD USER for \$15 for each diskette ordered, to: HUD USER, P.O. Box 6091, Rockville, MD 20850. HUD USER also may be reached by telephone at 1-800-245-2691 to answer inquiries about this software or to order diskettes when the cost of the diskettes is being charged to a VISA or MasterCard account. All inquiries, whether by mail or telephone, should reference "Notice FR-3255, Escrow Accounting Software."

#### Access via Internet

To access the software using the HUD Gopher, follow these procedures:

- Access the Internet;
- Select the Gopher option from the Internet utilities menu;
- Type the address: "huduser.aspensys.com 73" (depending on the user's Gopher convention, the selection of port 73 may be signaled by typing a different character (such as an underline, colon, or backslash) instead of the space);
- At the main menu of options, select "Policy Development and Research Publications";
- Then select "Homeownership"; and
- Select the two Lotus 1-2-3 format files: "biweekly mortgage aggregate adjustment" and "monthly mortgage aggregate adjustment".

Dated: March 27, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 914

[IN-111-FOR; Amendment 94-1]

#### Indiana Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with exceptions, a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Indiana's Surface Coal Mining and Reclamation Statutes concerning bond forfeiture procedures, underground mine subsidence control, permit revocation procedures, administrative orders and procedures, and conflict of interest. The amendment is intended to revise the Indiana Code (IC) to implement statutory changes.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

#### I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

#### II. Submission of the Amendment

By letter dated March 21, 1994 (Administrative Record Number IND-1341), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment consisting of three sets of changes to the Indiana program. The first set of changes involve statutes enacted by Indiana under SEA 408 from the 1994 Indiana Legislative Session. The amendments concern bond forfeiture procedures, underground mine subsidence control, and permit revocation procedures. The second set of amendments are contained in SEA 319 (Pub. L. 7-1987). These amendments primarily concern the substitution of the citation of the then-

repealed IC 4-22-1 with IC 4-21.5 concerning administrative orders and procedures. The third amendment is contained in HEA 1516 (Pub. L. 13-1987). This amendment changes the Indiana conflict of interest provisions. OSM announced receipt of the proposed amendment in the April 18, 1994, **Federal Register** (59 FR 18330), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 18, 1994.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

#### 1. IC 13-4.1-6-9 Forfeiture of Bond

Indiana is adding new subsection 9(b) to provide that an order issued under IC 13-4.1-6-9(a) is governed by IC 4-21.5-3-6 and becomes an effective and final order without a proceeding if a request for review of the order is not filed within 15 days after the order is served upon: (1) the permittee; and (2) the person that executed the permittee's bond or other performance guarantee, if the permittee filed a bond or other performance guarantee under IC 13-4.1-1.

The Director finds the proposed language is substantively identical to and no less effective than the Federal regulations at 30 CFR 800.50(b)(1) concerning forfeiture of bond.

#### 2. IC 13-4.1-9-2.5 Subsidence—Repair or Compensation

This new section is added as a counterpart to SMCRA section 720 which was added by the Energy Policy Act of 1992 (Pub. L. 102-486 [H.R. 776]; October 24, 1992). Subsection 2.5(a) provides that as used in subsection 2.5(d)(1), "repair" includes rehabilitation, restoration, or replacement. This proposed language is substantively identical to SMCRA subsection 720(a)(1) which provides that repair of damage shall include rehabilitation, restoration, or replacement.

New subsection 2.5(b) provides that as used in subsection 2.5(d)(1), "compensate" means to provide compensation in an amount equal to the full amount of the diminution of value

resulting from the subsidence referred to in subsection 2.5(d)(1). This proposed language is substantively identical to SMCRA subsection 720(a)(1) which provides that compensation shall be provided in the full amount of the diminution in value resulting from the subsidence.

New subsection 2.5(c) provides that for the purposes of subsection 2.5(d)(1), compensation may be accomplished through the purchase, before the commencement of mining operations, of a noncancellable premium-prepaid insurance policy. This proposed language is substantively identical to SMCRA section 720(a)(1) which provides that compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

New subsection 2.5(d) provides that the operator of an underground coal mining operation conducted after June 30, 1994, shall do the following: (1) Promptly repair or compensate for material damage resulting from subsidence caused to: (A) any occupied residential dwelling and any structure related to the occupied residential dwelling; or (B) any noncommercial building; due to the operator's underground coal mining operation. (2) Promptly replace any drinking, domestic, or residential water supply from a well or spring that: (A) was in existence before the filing of the operator's application for a surface coal mining and reclamation permit; and (B) has been affected by contamination, diminution, or interruption resulting from the operator's underground coal mining operation. This proposed language is substantively identical to SMCRA section 720(a), except that the Indiana provision applies only to underground coal mining operations which occur after June 30, 1994. SMCRA section 720(a) provides that underground coal mining operations conducted after the date of enactment of new section 720 (October 24, 1992) shall comply with the requirements of section 720. Therefore, to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994, the Director finds that IC 13-4.1-9-2.5 is no less stringent than SMCRA section 720(a).

The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994). The Federal subsidence regulations which will implement SMCRA section 720(a) have been finalized and will be published shortly.

Within 120 days after the publication of the new Federal subsidence regulations, OSM intends to published for each State with a regulatory program, including Indiana, final rule notices concerning the enforcement of the provisions of the Energy Policy Act in those States.

#### 3. IC 13-4.1-11-6 Suspension or Revocation of Permit

Indiana is amending subsection 6(a)(1)(B) by deleting the term "commission" and adding the words "adopted under IC 13-4.1-2-1." Indiana is also relating the words "the violations." As amended, IC 13-4.1-11-6(a)(1)(B) reads as follows: "the rules adopted under IC 13-4.1-2-1." Since IC 13-4.1-2-1 is the provision which establishes the authority for the Indiana Natural Resources Commission (the commission) to adopt rules, the change does not render the provision less effective. A similar amendment at subsection 6(a)(2)(A)(ii) also does not render the provision less effective.

Indiana is adding the words "permit conditions" at subsection 6(a)(2)(A)(iii) to provide a counterpart to SMCRA section 521(a)(4).

Subsection 6(a) is amended to provide that if the director of the IDNR determines that the criteria at subsections 6(a) (1) and (2) apply, the director shall issue an order of permit suspension or revocation and provide an opportunity for a public hearing. The provision formerly provided for an order "to the permittee to show cause why the permit should not be suspended or revoked." The amendment does not render the provision less stringent than SMCRA section 521(a)(4) because section 6 in its entirety still provides for a hearing at which the permittee could show cause why the permit should not be suspended or revoked.

Subsection 6(b) is amended by relocating the existing language to new subsection 6(e). New language is added to subsection 6(b) to provide that an order issued under the pattern of violations criteria at subsection 6(a) is governed by IC 4-21.5-3-6 concerning required notice, and becomes an effective and final order of the commission without a proceeding if a request for review of the order is not filed within 30 days after the order is served upon the permittee. The Director finds the revision to be no less stringent than SMCRA at section 521(a)(4).

Subsection 6(c) is amended by replacing a citation of "IC 4-21.5-3" with "IC 4-21.5." This change appropriately expands the citation to the entire Indiana administrative orders and procedures at IC 4-21.5. A block of

language concerning a written decision following the hearing is deleted from subsection 6(c) and added to new subsection 6(g).

New subsection 6(d) is added to provide that in a hearing requested under IC 4-21.5-3-7, the director of the IDNR has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The burden shall be satisfied if the director establishes a *prima facie* case that the criteria of subsection 6(a) have been met. This proposed language is consistent with and no less stringent than SMCRA at section 521(a)(4).

The language in new subsection (e) is relocated from subsection 6(b).

New subsection 6(f) provides that if the director of the IDNR determines in a hearing requested under IC 4-21.5-3-7 that the permit in question should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director of the IDNR. The Director finds that the proposed language is substantively identical to and no less stringent than SMCRA at section 521(a)(4).

New subsection 6(g) contains language deleted from subsection 6(c) and concerns the 60-day requirement to issue a final written decision following a hearing. The Director finds the proposed language is not inconsistent with SMCRA at section 521(a)(4) and is substantively identical to and no less effective than 30 CFR 843.13(c).

Based on the discussion above, the Director is approving the amendment to IC 13-4.1-11-6.

#### 4. IC 13-4.1-2-4 *Petition Procedures for Rules*

This section is amended in two locations by deleting reference to IC 4-22-1 and adding in its place a reference to IC 4-21.5 concerning administrative orders and procedures. IC 4-21.5 is Indiana's current statute controlling administrative orders and procedures and replaces the repealed IC 4-22-1. The Director finds the change does not render the Indiana program less effective.

Indiana is making similar citation changes in several provisions. Most of these changes involve replacing reference to the repealed IC 4-22-1 with IC 4-21.5 concerning administrative orders and procedures. At IC 13-4.1-4-3 Indiana is deleting reference to IC 14-4-2 which was repealed by Indiana in 1986 by Pub. L. 115-1986, at section 22.

The following provisions contain citation changes which do not render the Indiana program less stringent than SMCRA:

IC 13-4.1-2-4; IC 13-4.1-4-3; IC 13-4.1-4-5; IC 13-4.1-6-7; IC 13-4.1-11-6; IC 13-4.1-11-8; IC 13-4.1-11-12; IC 13-4.1-12-1; IC 12-4.1-13-1; and IC 13-4.1-15-9.

#### 5. IC 13-4.1-2-3 *Conflict of Interest*

This provision is amended to provide that an employee of the IDNR who has any duty under IC 13-4.1 may not have a direct or indirect financial interest in any surface coal mining operation. A member of the commission who has such an interest shall file annually with the State Board of Accounts. Any person who knowingly violates this provision commits a Class A misdemeanor.

Upon review of this provision, the Director has determined that this version of IC 13-4.1-2-3 predates and is superseded by the version which was the subject of a finding by the Director published in the **Federal Register** on December 15, 1989 (54 FR 51388). In that finding, the Director determined that IC 13-4.1-2-3 is not consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 and did not approve the amendments (see Finding 1, pages 51388 and 51389 of the December 15, 1989, **Federal Register**). In addition, the Director required at 30 CFR 914.16(b) that Indiana amend IC 13-4.1-2-3 or otherwise amend the Indiana program to be consistent with SMCRA at 517(g) and the Federal regulations at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA. That requirement still stands. Therefore, the Director is not acting on this earlier, superseded version of IC 13-4.1-2-3.

### IV. Summary and Disposition of Comments

#### *Federal Agency Comments*

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received concerning the proposed amendments to the Indiana program.

#### *Public Comments*

The public comment period and opportunity to request a public hearing was announced in the April 18, 1994, **Federal Register** (59 FR 18330). The comment period closed on May 18, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Mr. Rabb Emison, an attorney, submitted a comment on behalf of five

operators of publicly regulated pipelines in Indiana which carry petroleum products and natural gas. The following comments were made.

The commenters welcomed the proposed language concerning subsidence but stated that the amendment is not complete. Specifically, the comment stated that the proposed language specifies certain surface structures for protection, but may be interpreted to deny equal protection to commercial structures such as pipelines. This, they asserted, would seem to limit the protection Congress intended in section 516(b)(1) of SMCRA.

The comment stressed that protection of pipelines from unplanned subsidence is needed to prevent rupture of the pipelines and potential damage to property and the environment and loss of life. Protection should be given to surface structures equally, they stated.

In response, the Director notes that the proposed language is substantively identical to the counterpart language in SMCRA at section 720. The language of section 720(a) of SMCRA provides for the repair or compensation for material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial building due to underground coal mining operations.

In response to SMCRA section 720(b), OSM published proposed rules intended to implement SMCRA section 720(a) (58 FR 50174; September 24, 1993). In that notice, OSM specifically solicited comments on whether a need exists for nationwide rules that go beyond those required by SMCRA section 720(a). Comments received in response to that proposed rule are being reviewed.

#### *Environmental Protection Agency (EPA)*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record Number IND-1221). By letter dated June 21, 1994 (Administrative Record Number IND-1372), EPA concurred without comment.

**V. Director's Decision**

Based on the findings above, and except as noted below, the Director is approving the program amendment submitted by Indiana on March 21, 1994. As discussed in Finding 2, the Director is approving IC 13-4.1-9-2.5 to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994. In addition, the Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994). As discussed above in Finding 5, the Director is not acting on IC 13-4.1-2-3.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

**VI. Procedural Determinations**

*Executive Order 12866*

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

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable

standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have 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 counterpart 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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 counterpart Federal regulations.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1995.

**Ronald C. Recker,**

*Acting Assistant Director, Eastern Support Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 914—INDIANA**

1. The authority citation for Part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In Section 914.15, paragraph (ggg) is added to read as follows:

**§ 914.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(ggg) The following amendment (Program Amendment Number 94-1) to the Indiana program as submitted to OSM on April 18, 1994, is approved, except as noted below, effective April 4, 1995:

- IC 13-4.1-6-9 Forfeiture of bond
- IC 13-4.1-9-2.5 Subsidence repair or compensation, to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994. The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994).
- IC 13-4.1-11-6 Suspension or revocation of permits
- IC 13-4.1-2-4 Petition procedures for rules
- IC 13-4.1-2-4 Rule petition procedures
- IC 13-4.1-4-3 Necessary permit findings
- IC 13-4.1-4-5 Hearing on permit approval/disapproval
- IC 13-4.1-6-7 Release of bond or deposit
- IC 13-4.1-11-6 Suspension or revocation of permit
- IC 13-4.1-11-8 Temporary relief
- IC 13-4.1-11-12 Hearings; intervention
- IC 13-4.1-12-1 Civil penalties
- IC 13-4.1-13-1 Review of action of the director/commission
- IC 13-4.1-15-9 Hearings; use or disposition of acquired lands

The Director is not acting on IC 13-4.1-2-3, Conflict of interest.

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