

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

1. The authority citation for Part 230 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

2. By amending § 230.406 by revising paragraphs (b)(1) and (b)(3), to read as follows:

**§ 230.406 Confidential treatment of information filed with the Commission.**

\* \* \* \* \*

(b) \* \* \*

(1) One copy of the confidential portion, marked "Confidential Treatment," of the material filed with the Commission. The copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer or required disclosure, the entire answer or required disclosure, except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. The copy of the confidential portion shall be in the same form as the remainder of the material filed;

\* \* \* \* \*

(3) The copy of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, DC 20549.

\* \* \* \* \*

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

3. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

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4. By amending § 240.24b-2 by revising paragraph (b)(1), designating the flush text following paragraph (b)(2) as paragraph (b)(3), and revising newly designated paragraph (b)(3) to read as follows:

**§ 240.24b-2 Nondisclosure of information filed with the Commission and with any exchange.**

\* \* \* \* \*

(b) \* \* \*

(1) One copy of the confidential portion, marked "Confidential Treatment," of the material filed with the Commission. The copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. The copy of the confidential portion shall be in the same form as the remainder of the material filed;

\* \* \* \* \*

(3) The copy of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, DC 20549.

\* \* \* \* \*

Dated: September 7, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-22802 Filed 9-13-95; 8:45 am]

BILLING CODE 8010-01-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 914**

[SPATS No. IN-123-FOR; State Amendment No. 95-2]

**Indiana Regulatory Program**

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

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

**SUMMARY:** OSM is approving 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). Indiana proposes to revise revegetation standards for success for nonprime farmland for surface and underground coal mining and reclamation operations under Indiana Code (IC) 13-4.1. The

amendment is intended to improve operational efficiency.

**EFFECTIVE DATE:** September 14, 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, Indiana 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 Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

**II. Submission of the Amendment**

By letter dated May 3, 1995 (Administrative Record No. IND-1460), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. This amendment revises 310 IAC 12-5-64.1 and 310 IAC 12-5-128.1 pertaining to success standards for revegetation on nonprime farmland for surface and underground coal mining operations under IC 13-4.1.

OSM announced receipt of the proposed amendment in the May 30, 1995, **Federal Register** (60 FR 28069), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 29, 1995.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

*310 IAC 12-5-64.1 (Surface) and 12-5-128.1 (Underground) Revegetation Standards for Success for Nonprime Farmland*

Since the revisions being proposed for surface mining at § 12-5-64.1(c) are

identical to those being proposed for underground mining at § 12-5-128.1(c), they will be combined for ease of discussion. These subsections provide the standards for success which are to be applied under the approved postmining land uses.

1. *Organizational and Reference Changes.* Indiana proposes paragraph notation changes to reflect the organizational changes made throughout subsections (c). Additionally, Indiana proposes revisions throughout subsections (c) to correct the reference to the "Soil Conservation Service" to the "Natural Resources Conservation Service."

The Director finds the organizational changes and the correction of the reference do not render the Indiana regulations at 310 IAC 12-5-64.1/128.1 less effective than the Federal regulations at 30 CFR 816/817.116.

2. *Subsections (c)(3)(B); Pastureland Production Success Standards.* Subsection (c)(3)(B) concern the production success standards for revegetated pastureland areas. Indiana is proposing to relocate the provision in existing subsections (c)(4), which requires that if the current Natural Resources Conservation Service predicted yield by soil map units is used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued, to subsections (c)(3)(B).

The Director finds this organizational change does not render the Indiana regulations less effective than the Federal regulations and is approving this modification.

3. *Subsections (c)(3)(C); Pastureland Production Success Standards Methodology.* Indiana is proposing to delete the existing provision in subsections (c)(3)(C) for determining production of living plants on pastureland and is proposing to add the following provision.

(C) A target yield determined by the following formula: Target Yield = NRCS Target Yield × (CCA/10 Year CA) where: NRCS Target Yield = the average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used, and shall be contained in the appropriate sections of the permit application. CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. 10 Year CA = the ten (10) Year Indiana Agricultural Statistics Service county

average, consisting of the year being evaluated and the nine (9) preceding years.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. As discussed in the May 29, 1992, **Federal Register** (57 FR 22655), Indiana's average county yield data contains data of yields from previously mined lands. In letters dated February 26, 1992 (Administrative Record No. IND-1036 and IND-1037), OSM asked Indiana to clarify the use of this data. In letters dated March 20, 1992 (Administrative Record No. IND-1051 and IND-1052), Indiana stated that the amount of previously mined acreage being farmed is so limited that the inclusion of these yields essentially has no impact upon the overall yields calculated for the county average. Indiana also stated that it used the average county yield data as a weather correction factor applied to predicted soil mapping unit yields.

In the May 29, 1992, **Federal Register** (57 FR 22655, finding No. 1.c.), the Director found that the use of the Indiana average county yield data as the sole standard for determining success of revegetation would be less effective than the Federal regulations at 30 CFR 816/817.116(a)(2). However, the Director found that the use of Indiana's average county yield data as a correction factor would not be inconsistent with the Federal regulations.

The currently proposed methodology is an acceptable way to calculate production standards for non-prime farmland pastureland. This method adjusts the weighted production standard based on soil type by using a factor derived by the county average and an average of the historical county average. The weighted production standard is already approved in the Indiana program and the adjustment of this standard by county average data is reasonable. Thus the Director finds that the proposed method for calculating success standards on nonprime farmland pasture at 310 IAC 12-5-64.1/128.1(c)(3)(C) is no less effective than the Federal requirements for success standards at 30 CFR 816/817.116(a)(2).

4. *Subsection (c)(3)(D)/(c)(5)(D); Other Success Standards.* Indiana is proposing to revise the language in the provisions moved from subsections (c)(3)(C) and (c)(5)(C) to new subsections (c)(3)(D) and (c)(5)(D), respectively. These provisions allow other success standards approved by the director of

the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land and cropland areas. The provisions in (c)(3)(C) and (c)(5)(C) were previously approved by OSM on May 29, 1992 (57 FR 22655). The proposals would change the words "Other success standards" to "Other methods." The "methods" referred to are methods to determine success standards. Therefore, the modifications to the relocated provisions at (c)(3)(D) and (c)(5)(D) are not substantial changes from what was previously approved at (c)(3)(C) and (c)(5)(C).

The Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. In letters dated March 20, 1992 (Administrative Record Nos. IND-1051 and IND-1052), Indiana stated that the IDNR will request approval by OSM for other standards prior to their use in the Indiana program if they vary significantly from the approved standards.

Based on the above discussion, the Director is approving the provisions at 310 IAC 12-5-64.1/128.1(c)(3)(D) and 12-5-64.1/128.1(c)(5)(D).

5. *Redesignations.* Existing subsections (c)(5) are redesignated subsections (c)(4) without any changes to the provisions. These subsections concern stocking levels and success standards for vegetation on areas to be developed as shelter belts or for fish and wildlife habitat, recreation or forestry land use.

Existing subsections (c)(6) are redesignated subsections (c)(5) with changes. The changes to redesignated (c)(5) are discussed in finding No. 4 and finding No. 6. These subsections concern the success standards for production on revegetated cropland areas.

Existing subsections (c)(7) are redesignated subsections (c)(6). Indiana is proposing to relocate the provision in existing subsections (c)(7), which requires that if the current Natural Resources Conservation Service predicted yield by soil map units is used to determine production of living plants then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued, to redesignated subsections (c)(5)(B). Indiana is also proposing to redesignate from existing subsections (c)(7) to

subsections (c)(5)(E) the provision which requires that once the method for establishing the standards has been selected, it may not be modified without the approval of the director of IDNR.

Existing subsections (c)(8) are redesignated subsections (c)(7) without change. These subsections concern revegetation success where barren areas exist within an area under evaluation.

The Director finds the proposed redesignations do not render the Indiana regulations less effective than the Federal regulations.

6. *Subsections (c)(5); Cropland Production Success Standards Methodology.* Indiana is proposing to delete the provision in existing subsections (c)(6)(C) for determining production of living plants on cropland and is proposing to add the following provision to redesignated subsections (c)(5)(C).

(C) A target yield determined by the following formula: Target Yield = CCA × (NRCSP/NRCSC) where: CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. NRCSP = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which existed on the permit at the time the permit was issued. NRCSC = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which is shown to exist in the county on the most current county soil survey. A croppable soil is any soil which the Natural Resources Conservation Service has defined as being in capability class I, II, III, or IV.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. The above discussion in finding No. 3, pertaining to Indiana's average county yield data containing data of yields from previously mined lands is also relevant to this proposed revision. As discussed in finding No. 3, the Director had previously found that the use of Indiana's average county yield data as a correction factor was not inconsistent with the Federal regulations.

Indiana's currently proposed methodology would modify the county average by a factor that uses the NRCS predicted standard for permitted unmined soils and a NRCS predicted standard that excludes mined land. Therefore, the Director is approving the provisions proposed at 310 IAC 12-5-64.1/128.1(c)(5)(C).

#### IV. Summary and Disposition of Comments

##### Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. No comments were received from these agencies.

##### Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed 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. On June 15, 1995 (Administrative Record No. IND-1489), EPA responded that it concurred on the proposed amendment without comment.

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. No comments were received.

#### V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Indiana on May 3, 1995.

The Director approves, as discussed in: finding No. 3, the provisions at 310 IAC 12-5-64.1/128.1(c)(3)(C), concerning a methodology for determining the success of production of living plants on nonprime pasture land areas; finding No. 4, the provisions at 310 IAC 12-5-64.1/128.1(c)(3)(D) and 12-5-64.1/128.1(c)(5)(D), concerning the director of IDNR's approval of other success standards to be used in determining success of production of living plants on revegetated nonprime

farmland pasture land and cropland areas; finding No. 6, 310 IAC 12-5-64.1/128.1(c)(5)(C), concerning a methodology for determining the success of production of living plants on nonprime cropland areas.

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. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by OSM, 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 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. 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 corresponding Federal regulations.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1995.

#### Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating 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. Section 914.15 is amended by adding paragraph (kkk) to read as follows:

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

\* \* \* \* \*

(kkk) The following rules, as submitted to OSM on May 3, 1995, are approved effective September 14, 1995: 310 IAC 12-5-64.1(c) and 310 IAC 12-5-128.1(c) concerning standards for success for nonprime farmland for surface and underground coal mining reclamation operations.

[FR Doc. 95-22866 Filed 9-13-95; 8:45 am]

BILLING CODE 4310-05-M

#### 30 CFR Part 944

#### Utah Regulatory Program

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to its rules pertaining to normal husbandry practices and the Utah "Vegetation Information Guidelines." The amendment is intended to revise the Utah program to improve operational efficiency.

**EFFECTIVE DATE:** September 14, 1995.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Seibel, Telephone: (303) 672-5501.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16 and 944.30.

##### II. Submission of Proposed Amendment

By letter dated February 6, 1994, Utah submitted a proposed amendment to its program (administrative record No. UT-1025) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment at its own initiative. Utah proposed to revise its Coal Mining Rules at Utah

Administrative Rule (Utah Admin. R.) 645-301-357.300 through 365 to specify normal husbandry practices that could be implemented without restarting the bond liability period. Utah also proposed to revise its "Vegetation Information Guidelines," by adding a bibliography of referenced publications for the proposed normal husbandry practices.

OSM announced receipt of the proposed amendment in the March 15, 1995, **Federal Register** (60 FR 13935), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-1034). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 14, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 645-301-357.340, Utah Admin. R. 645-301-357.350, and Appendix C of Utah's "Vegetation Information Guidelines." OSM notified Utah of the concerns by letter dated May 23, 1995 (administrative record No. UT-1054). Utah responded in a letter dated June 5, 1995, by submitting a revised amendment that addressed OSM's concerns (administrative record No. UT-1059).

Based upon the revisions to the proposed program amendment submitted by Utah, OSM reopened the public comment period in the July 6, 1995, **Federal Register** (60 FR 35158; administrative record No. UT-1064). The public comment period closed on July 21, 1995.

##### III. Director's Findings

Utah submitted an amendment to its program revising Utah Admin. R. 645-301-357.300 through 645-301-357.356 to specify approved normal husbandry practices that could be implemented without restarting the period of extended responsibility for successful revegetation (bond liability period). Utah also proposed to revise its "Vegetation Information Guidelines," by adding Appendix C, a bibliography of referenced publications that support the proposed normal husbandry practices. OSM has previously approved Utah's "Vegetation Information Guidelines" (56 FR 41803, August 23, 1991).

The Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved