

IV. 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: January 12, 1996.
Brent Wahlquist,
Regional Director, Mid-Continent Regional
Coordinating Center.

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30 CFR Part 914

[SPAT No. IN-133-FOR; Amendment No. 95-11]

Indiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Indiana Surface Coal Mining and Reclamation Act (ISM CRA) as enacted by the Indiana General Assembly (1995) in House Enrolled Act 1575 (HEA 1575). The proposed amendment concerns unanticipated events or conditions, lands eligible for remining, and surface and underground tonnage fees. The amendment is intended to revise the Indiana program to be consistent with SMCRA and to incorporate State initiatives.

DATES: Written comments must be received by 4:00 p.m., e.s.t., February 21, 1996. If requested, a public hearing on the proposed amendment will be held on February 13, 1996. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t., on February 6, 1996

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all

written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director,
Indianapolis Field Office, Office of
Surface Mining Reclamation and
Enforcement, Minton-Capehart
Federal Building, Room 301,
Indianapolis, Indiana 46204,
Telephone: (317) 226-6700.
Indiana Department of Natural
Resources, 402 West Washington
Street, Room C256, Indianapolis,
Indiana 46204, Telephone: (317) 232-
1547.

FOR FURTHER INFORMATION CONTACT:
Roger W. Calhoun, Director,
Indianapolis Field Office, Telephone:
(317) 226-6700.

SUPPLEMENTARY INFORMATION:

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. Description of the Proposed Amendment

By letter dated September 11, 1995 (Administrative Record No. IND-109), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. HEA 1575 amends ISMCRA by adding new sections and revising existing sections to recodified Indiana Code (IC) 14-8 and 14-34. The proposed amendment concerns unanticipated events or conditions, lands eligible for remining, and surface and underground tonnage fees. The recodification of the current provisions of ISMCRA is proposed in Indiana's Regulatory Program Amendment No. 95-10, and it will be discussed in a separate proposed rule.

1. IC 14-8-2-144.5 Lands Eligible for Remining

Indiana proposed to add the following definition for lands eligible for remining at IC 14-8-2-144.5

"Lands eligible for reining", for purposes of IC 14-34, means those lands that are eligible for funding under: (1) IC 14-34-19; or (2) Section 402(g)(4) of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(4)).

2. IC 14-8-2-285.5 *Unanticipated Event or Condition*

Indiana proposes to add the following definition for unanticipated event or condition at IC 14-8-2-285.5.

"Unanticipated event or condition", for purposes of IC 14-34-4, means an event or condition that: (1) is encountered in a reining operation; and (2) was not contemplated by the applicable surface coal mining and reclamation permit.

3. IC 14-34-2-4 *Responsibilities of the Director*

Indiana proposes to amend recodified IC 14-34-2-4 [previously IC 13-4.1-2-2(b)] by adding new paragraph (7) to subsection (a) and adding new subsection (b) to read as follows.

(7) Submit to the federal Office of Surface Mining a formal state program amendment, subject to subsection (b).

(b) The director may submit a formal amendment to the state program for the regulation of surface coal mining and reclamation to the federal Office of Surface Mining only after the provisions of the amendment: (1) have been approved by the governor; or (2) have become law.

4. IC 14-34-4-8.5 *Permit Findings*

Indiana proposes to add the following new section at IC 14-34-4-8.5.

The: (1) finding required by section 7(a)(6) of this chapter; and (2) prohibition on the issuance of a permit in section 8 of this chapter; do not apply to a violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for reining under a permit held by the applicant.

5. IC 14-34-4-10.5 *Permit Application Requirement*

Indiana proposes to add the following new section at IC 14-34-4-10.5.

(a) A person who submits an application for a permit or for the revision or renewal of a permit under this article shall, to the extent not otherwise addressed in the permit application, make a good faith effort to identify potential problems that may result in an unanticipated event or condition.

(b) An event or condition that arises despite substantial adherence to the applicable operation and reclamation plan may be considered unanticipated if it was not identified in the application for the governing permit.

6. IC 14-34-10-2(b)(23) *Revegetation Requirement*

Indiana proposes to amend recodified IC 14-34-10-2(b)(23) [previously IC 13-4.1-8-1(20)] by adding the words "as

follows" after the phrase "Assume the responsibility for successful revegetation, as required by subdivision (22)" and by adding two subparagraphs (A) and (B). Subparagraph (A) contains the previous provision pertaining to a five-year responsibility period, and Indiana clarified this provision by adding an introductory phrase, "On lands not eligible for reining." Subparagraph (B) contains the following new provision for lands eligible for reining.

(B) On lands eligible for reining, for two (2) full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to ensure compliance with subdivision (22).

7. IC 14-34-13-1 *Reclamation Fee Requirement for Surface Coal Mining Operations*

Indiana proposes to amend recodified IC 14-34-13-1 [previously IC 13-4.1-3-2(b)] by (1) removing the language "Notwithstanding any other fees paid before July 1, 1991, until July 1, 1995,"; (2) adding the word "surface" before the word "coal" in the first sentence; and (3) by changing the reclamation fee from five and one-half cents (\$0.055) to three cents (\$0.03) per ton of coal produced.

8. IC 14-34-13-2 *Reclamation Fee Requirement for Underground Coal Mining Operations*

Indiana proposes to amend recodified IC 14-34-13-2 [previously IC 13-4.1-3-2(c)] by adding new subsection (a) and by revising the existing language and designating it as subsection (b).

a. The following new provision was added at subsection

(a).

Except as provided in subsection (b), all operators of underground coal mining operations subject to this article shall pay to the department for deposit in the natural resources reclamation division fund established by IC 14-34-14-2 a reclamation fee of two cents (\$0.02) per ton of coal produced.

b. At subsection (b), the language "Until July 1, 1995," is removed from the beginning of the first sentence, and the word "that:" is added after the word "operations." At subsection (b)(1), the word "with" is removed and replaced with the word "have." At subsection (b)(2), the word "who" is removed.

9. IC 14-34-19-2 *Abandoned Mines*

Indiana proposes to amend recodified IC 14-34-19-2 [previously IC 13-4.1-15-2] by designating the existing language as subsection (a) and by adding new subsection (b). New subsection (b) reads as follows:

Surface coal mining operation on lands eligible for reining do not affect the eligibility of the lands for reclamation and restoration under this chapter after the release of the bond or deposit for the operation under IC 14-34-6.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** BY 4:00 p.m., e.s.t., on [February 6, 1996]. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing

to meet the OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notice of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. 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: January 9, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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30 CFR Part 914

[SPAT No. IN-134-FOR; Amendment No. 95-12]

Indiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Indiana Surface Coal Mining and Reclamation Act (ISM CRA) as enacted by the Indiana General Assembly (1995) in Senate Enrolled Act 125 (SEA 125). The proposed amendment concerns the submittal of affected area status reports and performance bonding. The amendment is intended to revise the Indiana program to be consistent with SMCRA and to incorporate State initiatives.

DATES: Written comments must be received by 4:00 p.m., e.s.t., February 21, 1996. If requested, a public hearing on the proposed amendment will be held on February 13, 1996. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t., on February 6, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director,
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Surface Mining Reclamation and
Enforcement, Minton-Capehart
Federal Building, Room 301,
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Telephone: (317) 226-6700.

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1547.

FOR FURTHER INFORMATION CONTACT:

Roger W. Calhoun, Director,
Indianapolis Field Office, Telephone:
(317) 226-6700.

SUPPLEMENTARY INFORMATION:

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. Description of the Proposed Amendment

By letter dated September 11, 1995 (Administrative Record No. IND-1510), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. SEA 125 amends ISMCRA by adding new sections and revising existing sections, concerning affected area status reports and performance bonding, to recodified Indiana Code (IC) 14-8 and 14-34. The recodification of the current provisions of ISMCRA is proposed in Indiana's Regulatory Program Amendment No. 95-10, and it