the **Federal Register** a proposed new paragraph (f) to add to 29 CFR 2204.105 containing its Rules of Procedure concerning eligibility under the Equal Access to Justice Act, 62 FR 42957 (August 11, 1997). The new paragraph is based on the model rule of the (former) Administrative Conference of the United States, adopted in large part by most federal agencies, concerning aggregation of the net worth and number of employees of the applicant with those of its affiliates. At the same time, the Commission also proposed to change all references to the ''EAJ Act'' in 29 CFR Part 2204 to read ''EAJA'' to conform to the common shortened reference term for the Equal Access to Justice Act. The only comments that the Commission received were from the Office of the Solicitor, U.S. Department of Labor, which supports the changes as proposed. The Commission thanks that office for its time and interest.

List of Subjects in 29 CFR Part 2204

Claims, Equal access to justice, Lawyers.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2204 of the Code of Federal Regulations to read as follows:

PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1. The authority citation for Part 2204 continues to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

PART 2204—[AMENDED]

2. All references in Part 2204 to ''EAJ Act'' are revised to read ''EAJA'' wherever they appear.

3. A new paragraph (f) is added to § 2204.105 to read as follows:

§ 2204.105 Eligibility of applicants.

* * * * *

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

Dated: October 29, 1997.

Stuart E. Weisberg,

Chairman.

Daniel Guttman,

Commissioner.

[FR Doc. 97–29101 Filed 11–3–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–134–FOR; State Program Amendment No. 95–12]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving with certain exceptions a proposed amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to the Indiana Surface Coal Mining and Reclamation Act (ISMCRA) as enacted by the Indiana General Assembly (1995) in Senator Enrolled Act 125 (SEA 125). The proposed amendment, concerning the submittal of affected area status reports and performance bonding, is intended to revise the Indiana program to be consistent with SMCRA and incorporate State initiatives.

EFFECTIVE DATE: November 4, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204–1521, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed 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 Proposed Amendment

By letter dated September 11, 1995 (Administrative Record No. IND–1510), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment as 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. The provisions of the ISMCRA that Indiana proposes to add at recodified IC 14–8 are: IC 14–8–42.5, definition of ''collateral''; IC 14–8–2–49.5, definition of ''comparative balance sheet''; IC 14–8–2–49.6, definition of ''comparative income statement''; IC 14–8–2–274.5, definition of ''Surface Mining Control and Reclamation Act.'' The provisions of the ISMCRA that Indiana proposes to revise or add at recodified IC 14–34 are: IC 14–34–5–10, affected area status reports; IC 14–34–6–14.3 and IC 14–34–14.6, general requirements of performance bonding; IC 14–34–7–0.5, definition of ''collateral''; IC 14–34–7–0.6, definition of ''comparative balance sheet''; IC 14–34–7–0.7, definition of ''comparative income statement''; IC 14–34–7–2.5, definition of ''Surface Mining Control and Reclamation Act''; IC 14–34–7–1, definition of ''liabilities''; IC–14–34–7–4(b), definition of ''current liabilities''; IC 14–34–7–4(d), conditions for self-bonding; IC 14–34–7–4(e), (f) and (g), additional conditions for self-bonding; IC 14–34–7–4.1, replacement of self-bonds; IC 14–34–7–5, corporate guarantee; IC 14–34–7–7, indemnity agreement conditions; IC 14–34–7–7.1, use of collateral to support a self-bond; IC 14–34–7–8, information requirements for self-bonding; IC 14–34–7–9, requirements for a change in financial conditions; IC 14–34–7–10, self-bonding report requirements; IC 14–34–7–11, self-bond coverage requirements: IC 14–34–7–12, self-bond Phase I grading release requirements; and IC 14–34–7–13, nonseverability provision.

OSM announced receipt of the proposed amendment in January 22, 1996, **Federal Register** (61 FR 1551), 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 February 21, 1996.

During its review of the amendment, OSM identified concerns relating to duplicate bond coverage/reclamations agreements, IC 14–34–6–14.6; definition of ''liabilities,'' IC 14–34–7–1; self-bonding qualifying criteria, IC 14–34–7–4; collateral self-bonds, IC 14–34–7–7.1; and report of qualified independent public accounting consultant, IC 14–34–7–10. OSM notified Indiana of these concerns by letter dated September 13, 1996 (Administrative Record No. INC–1543).

By letter dated October 25, 1996 (Administrative Record No. IND–1545), Indiana responded to most of OSM's concerns by submitting additional explanatory information. By letter dated August 4, 1997 (Administrative Record No. IND–1584), Indiana responded to OSM's editorial concerns by submitting Senate Enrolled Act 7, which contained technical corrections to its proposed amendment. Because the additional information merely clarified certain provisions of Indiana's proposed amendment, OSM did not reopen the public comment period.

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.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Indian's Statutes That Are Substantively Identical to the Corresponding Federal Provisions

1. Indiana proposes to revise the following statute that contains language that is identical in meaning to the counterpart Federal regulation indicated in brackets IC 14–34–7–5, Self-Bonding Corporate Guarantee [30 CFR 800.23(c)(1)].

Because the above proposed revision is identical in meaning to the corresponding Federal regulation, the Director finds that Indiana's proposed statute is no less stringent than SMCRA and no less effective than the Federal rule.

B. Revisions to Indiana's Statutes That Are Not Substantively Identical to the Corresponding Federal Provisions

1. IC 14–8–2–42.5 and IC 14–34–7–0.5 Definition of Collateral

Indiana proposes to add a definition of ''Collateral'' to its statutes. At IC 14–8–2–42.5, Indiana proposes to add language as follows.

''Collateral,'' for purposes of IC 14–34–7, has the meaning set forth in IC–14–34–7–0.5.

At IC 14–34–7–0.5, Indiana proposes to add the following definition of ''Collateral.''

As used in this chapter, *collateral* means the actual or constructive deposit, as appropriate, with the director of one (1) or more of the following types of property in support of a self-bond:

(1) A perfected, first-lien security interest in favor of the department of natural resources in real property located in Indiana that meets the requirements of this chapter.

(2) Securities backed by the full faith and credit of the United States government, or state government securities, that are: (A) acceptable to; (B) endorsed to the order of; and (C) placed in the possession of; the director.

(3) Personal property that is located in Indiana and owned by the applicant, the market value of which is more than one million dollars ($1,000,000) per property unit.

Indiana's proposed language at IC 14–34–7–0.5(1) and (2) would allow operators to use as collateral the same forms of collateral approved by the Federal regulation that define ''Collateral bond'' at 30 CFR 800.5(b)(5) and (6). The Federal regulation at 30 CFR 800.5(b) do not include a provision that allows personal property to be used as collateral, but neither do they specifically prohibit the use of personal property for collateral.

With the exception of personal property, Indiana is proposing collateral mechanisms to support a self-bond that are similar to the collateral mechanisms allowed in the federal program to support a permittee's indemnity agreement as bond. The Federal self-bonding regulations at 30 CFR 800.23 do not contain a counterpart to Indiana's revised statutes providing for the use of personal property as collateral for self-bonds. The Federal regulations at 30 CFR 800.21 do allow the use of real property and government-backed securities as collateral for indemnity agreements. OSM eliminated the use of personal property as collateral in a July 19, 1983, **Federal Register** notice (48 FR 32932). In that notice OSM stated that ''because of potential problems, including potential loss of the property, difficulties obtaining appraisals of such items, fluctuations in value, and the potential attachment of liens, personal property as a general form of collateral was deleted from the Federal definition of acceptable collateral.'' Indiana's proposal to allow self-bonding applicants to collateralize a self-bond with personal property is similar to the State of Wyoming's self-bonding program approved by OSM (55 FR 30227, July 25, 1990). As stated in the preamble to the approval of the Wyoming regulations, OSM said that the State had addressed all of OSM's concerns about the use of personal property, namely that with a minimum value of $1 million per unit, the concern that property would be small and hard to track is resolved. The Indiana proposal also requires a per unit property value of $1 million. In addition, the State plans to accept the value of property at the difference between the marke t value of the State's projected liquidation costs. This is consistent with the requirements under the Federal regulations to adjust the value of collateral by a margin that represents liquidation cost in order to avoid inflating the value of the property as bonding collateral. Both the Wyoming self-bonding program and the proposed Indiana self-bonding revisions require the applicant to meet certain financial tests in order to use collateral to support the self-bond. In Wyoming, the tests are an alternate set of tests. Indiana is proposing that an applicant meet two out of the three standard financial tests in order to pledge personal property collateral; therefore, this provides extra assurance that the applicant will have the financial resources necessary to perform the reclamation should the property decrease in value. Like the Wyoming program, Indiana's proposal requires that the applicant provide the State with a perfected, first lien security interest. Therefore, the concern over liens is resolved. The State's proposal to require maintenance reports will help assure that the collateral is maintained in good working order. As with the Wyoming program, the Director finds that the State's proposed use of personal property to collaterlize self-bond is not inconsistent with not less effective that the Federal regulations. Therefore, the Direct's is approving Indiana's proposed definitions for the term collateral at IC 14–8–2–42.5 and IC 14–34–7–0.5.

2. IC 14–8–2–274.5 and IC 14–34–7–2.5 Definition of Surface Mining Control and Reclamation Act

Indiana proposes to add a definition of ''Surface Mining Control and Reclamation Act,'' to its statutes. At IC 14–8–2–274.5, Indiana proposes to add language as follows.

''Surface Mining Control and Reclamation Act,'' for purpose of IC 14–34–7, has the meaning set forth in IC 14–34–7–2.5.

At IC 14–34–7–2.5, Indiana proposes to add the following definition of ''Surface Mining Control and Reclamation Act.''

As used in this chapter, *Surface Mining Control and Reclamation Act* means the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328).

The Federal regulations at 30 CFR 705.5 define the term ''Act'' to mean the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87. Indiana's proposed definition at IC 14–34–7–2.5, which refers to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328) as the ''Surface Mining Control and Reclamation Act,'' would not render the Indiana statutes less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 705.5. Therefore, the Director is approving Indiana's definition of at IC 14–8–2–274.5 and IC 14–34–7.2.5.

3. IC 14–34–7–1 Definition of Liabilities

Indiana's existing statute at IC 14–34–7–1 is identical to the Federal definition of libitlities at 30 CFR 800.23(a). The State proposes to amend the definition of liabilities as:

''obligations to transfer assets or provide services to other entities in the future as a result of past transaction. The term does not include amounts that are required to be recorded for financial accounting purpose under Statement of Financial Accounting Standards number 106 issued by the Financial Accounting Standards Board and effective December 1990.''

The State proposes to allow companies to exclude FAS 106 obligations form liabilities for the purpose of applying for self-bonding.

As outlined in OSM's September 13, 1996, letter to Indiana, this proposal is deemed to be less effective than the counterpart Federal regulations. The Federal regulations require that all liabilities be shown on an applicant's balance sheet prepared in accordance with Generally Accepted Accounting Principles (GAAP). GAAP follows the accounting rules established by the Financial Accounting Standards Board (FASB), a private organization funded by professional accounting associations.

In its October 25, 1996, response to OSM's letter, the State supports its position that FAS 106 liabilities do not need to be included in an applicant's financial statement by referring to public comments dated February 6, 1996 (Administrative Record Number IND–1532), as its justification.

OSM does not believe that these comments reflect the most current and/or the most accurate information on FAS 106 and its effects on self-bonding applicants. Therefore, OSM continues to consider the State's proposed definition of liabilities to be less effective than the Federal regulations for the reasons discussed below.

The information and journal articles that the comments referred to have subsequently been updated by more current thinking and journal articles on the subject. In addition, the State has not provided any evidence that eliminating FAS 106 liabilities from an applicant's balance sheet provides the same level of information and accuracy for financial reporting that is gained by reporting all liabilities (as required by the FASB). Part of the FAS 106 liability includes, the current portion of the liability (for retirees for the current year). Eliminating the total FAS 106 obligation from the balance sheet would result in an inaccurate accounting of the applicant's current obligations. This would result in a current ratio that does not represent the actual current obligations of the applicant.

Below is an analysis of the FAS 106 obligations and reasons why removing the obligations from an applicant's balance sheet is less effective than the Federal regulations. A new accounting rule, FAS 106, issued by the FASB in December 1990, requires companies to accrue the costs of postretirement health benefits and to show this as a liability on their balance sheets starting in 1993. Prior to 1993, these obligations were recognized on a pay-as-you-go-basis. FAS 106 obligations include health benefits earned during an employee's active employment and paid out at retirement. Computing the amount of the liability involves a number of factors including long-term interest rates and the health care cost trend rate. As stated in ''FAS 106 Still Looms Large,'' published in the January 23, 1995, issue of Pensions and Investments, ''While many investment managers and financial analysts believe 1993's big writeoffs and resulting earnings losses put the bad news behind, there will be ongoing, albeit smaller, financial problems associated with FAS 106, that could produce a drag on earnings, according to benefits specialists and actuaries.''

The State's proposed change to the definition of liabilities would allow self-bonding applicants to compute the self-bond qualifying ratios and financial limitations based on pre-FAS 106 financial data, thereby applying the 25 percent of net worth test to pre-FAS 106 net worth. Under this proposal, the State would not know the extent and the effects of the applicant's FAS 106 obligation on the applicant's long-term financial condition. This could result in the State accepting a self-bond from an applicant whose long-term FAS 106 obligations are material enough to threaten the future viability of the self-bonding arrangement. While the obligation as a whole does not represent a cash outlay in any given accounting period, it eventually must be paid whether a company amortizes the amount (delayed recognition) or accounts for it on an ''immediate recognition basis.'' While some components of the FAS 106 obligation are estimated, to recognize only that part of the obligation being paid to current retirees, or to exclude the liability altogether, results in an inaccurate picture of a companys' long term financial condition. The longer the life of the mine for which a self-bonding arrangement is sought, the greater the significance of the FAS 106 obligation because of the long-term nature of reclamation.

Articles published in the February and March 1993, issues of Corporate Cashflow Magazine and Financial World state that bond rating services such as Moody's and Standard and Poor's will consider the effects of FAS 106 when rating a company's bond issues. Companies' bonds will be rated on the basis of both pre-FAS 106 and post-FAS 106 financials. One of the articles advises readers to ''Ignore FAS 106 at your peril * * *'' and that '' 'Over time there will be credit-quality implications for those companies that are unable to recoup FAS 106 losses through earnings or some other balance-sheet enhancement, such as issuing new stock,' says Joseph C. Bencivenga, managing director and head of corporate bond research for Salomon Brothers. Adds Brown Brothers' Hill: 'Future claims on cash should not be overlooked by equity investors in their investment decision-making. This is especially true for the more labor-intensive, unionized industries with large postretirement benefit liabilities, where retired employees sometimes have a claim on cash equal to that of the shareholders.' '' In the January 23, 1995, issue of Pensions and Investments, the article entitled ''FAS 106 Still Looms Large,'' states that ''In 1993, most companies adopted FAS 106 and recognized obligations for past service liabilities on the balance sheet, resulting in writedowns of 7% to 12% in book value among Standard & Poor's 500 companies alone.''

The above articles on FAS 106 are in contrast to earlier articles on the subject published in 1989 and 1991 that indicated that bond rating services, Moody's and Standard and Poor's (S&P), would ignore the effects of FAS 106 and that bond ratings would stay the same. However, as indicated in the above 1993 and 1995 articles, after companies began implementing the requirement in 1993, the post-retiree health benefit obligations far exceeded amounts anticipated causing rating companies such as S&P and Moody's to take a second look at the effects of these obligations. According to ''FAS 106 Still Looms Large,'' in the January 23, 1995, issue of Pensions and Investments, ''liabilities that resulted in billions of dollars in reduced operations earnings last year still hold some expensive surprises. Industry sources warn there may be additional reductions in earnings linked to higher ongoing annual expenses caused by Financial Accounting Standards FAS 106.''

In its summary to the FAS 106 statement, the FASB stated that one of the Board's objectives in issuing this Statement is'' * * * to enhance the ability of users of the employer's financial statement to understand the extent and effects of the employer's undertaking to provide postretirement benefits to its employees by disclosing relevant information about the obligation and cost of the postretirement benefit plan and how those amounts are measured.''

A commenter (Administrative Record Number IND–1532), in support of the State's proposed amendment, stated that the Indiana statute (SEA 125) was ''enacted to remedy a situation resulting from a change in accounting standards [FAS 106] which occurred subsequent to the original enactment of statutory provisions governing self-bonding in Indiana in 1988, as a result of which most Indiana coal producers are no longer eligible to self-bond.'' The commenter believes that the Federal self-bonding regulations should also be revised in light of the FAS 106 change to accounting principles especially because ''credit-rating agencies, including the bond rating agencies referred to in section 800.23(b)(3)(i) [S&P and Moody's], have decided not to change credit ratings based on FAS 106.'' To support the State's proposal, the commenter cited an article published in 1989, prior to the 1993 implementation of FAS 106 and prior to the financial industry knowing the actual effects of implementing FAS 106.

OSM disagrees with the commenter that bond rating companies have decided not to change credit [bond] ratings and that the best approach is to follow the lead of credit-rating agencies as justification for changing the self-bonding regulations. Based on OSM's discussions with Standard and Poor's (S&P) and Dun and Bradstreet (D&B), and in reviewing current literature as discussed above, OSM believes that the effects of FAS 106 apply to many aspects of an applicant's financial statement and are too complex to be discounted by simply removing the obligation from liabilities. S&P and Moody's employ many variables related to FAS 106 obligations when establishing a company's bond rating. FAS 106 obligations are considered.

During its review of the State's proposal, OSM conducted research to determine how the credit industry is treating FAS 106 obligations in underwriting decisions. Financial analysts from (S&P) and (D&B) discussed their procedures for recognizing the FAS 106 obligation with OSM. One senior analyst from S&P said that S&P recognizes the FAS 106 transaction as a ''non-cash'' charge and retains the prior bond rating if the fundamentals of a company have not changed. According to S&P's written guidance, ''Corporate Finance Criteria,'' S&P states that FAS 106 obligations:

''are not viewed in the same light as straight debt, since amounts to be paid in future years are subject to change. Nonetheless, S&P believes that, for analytic purposes, the entire unfunded APBO [Accumulated Postretirement Benefit Obligation] should be reflected in the balance sheet as a liability regardless of whether a company opts for immediate or delayed recognition [of the liability] under FAS 106 * * *. Moreover, it is critical to have one basis for analysis to allow comparison between companies. In assessing capital structure, S&P makes balance sheet adjustments so that the unfunded APBO is fully recognized * * *. In cases where a company's retiree medical liability burden is material, S&P does not rely on any single figure as a definitive representation of the OPEB [Employers' Accounting for Post-retirement Benefits other than pensions]. Rather, the analysis may consider several alternative estimates and financial ratios based on each * * *. The level of cash outlays has the most immediate impact on a company's financial health. Given the trend of dramatic increases in spending for these benefits, S&P focuses on prospective cash outlays * * *. In assessing the significance of OPEBs and other debt-like obligations to a company, the ratio of total liabilities to net worth becomes a more significant ratio.''

As shown above, S&P considers the effects of FAS 106 when assigning bond ratings; and in fact, S&P adjusts the obligation so that it is fully recognized (rather than amortized) in order to have a basis of comparison between companies. If an applicant can retain an A or higher bond rating after implementing FAS 106, and after being analyzed by S&P or Moody's, it may still qualify for self-bonding.

In discussions with OSM, two Dun and Bradstreet financial analysts indicated that they might drop a company's Dun and Bradstreet credit rating as a result of FAS 106; however, this would be based on many considerations including whether a company made a profit and had positive cash flow after implementing FAS 106. One analyst said that if the financial effects of a one-time charge were significant, but other items in the financial statement indicated the company was strong, he might change the credit rating to a ''blank'' rating [no rating assigned] with notes of explanation. Both analysts indicated that following a company's implementation of FAS 106, factors that are heavily weighed during the credit rating process are a company's cash flow, profitability, and ranking when compared with industry peers (industry norms).

Bond ratings and credit ratings may or may not be changed depending on the overall financial condition of the company being rated. Therefore, eliminating the FS 106 obligation from liabilities based on assumptions that the liability is being ignored by the rating services and the investment and credit industries is incorrect.

Based on the above discussion, the Director is not approving the proposed revision to Indiana's definition of liabilities at IC 14–34–7–1, and is requiring Indiana to remove the disapproved language. To be no less effective than the Federal regulations, the State needs to retain its current approved definition of liabilities that requires all liabilities be reported in the application, and not exclude FAS 106 obligations from the definition of liabilities. A possible future option for dealing with FAS 106-type obligations would be to develop alternative self-bonding criteria, no less effective than the Federal regulations, that recognize FAS 106 obligations as a liability while still allowing financially strong companies to qualify for self-bonding.

4. IC 14–34–6–14.3 Release of Bond From Undisturbed Areas

Indiana proposes to add the following new section at 14–34–6–14.3.

The director may release the bond, deposit, or letter of credit covering an area that has not been disturbed by surface mining activities. A release under this subsection is not subject to the public notice and hearing requirements set forth in sections 7 through 14 of this chapter.

Indiana's proposed language is similar to the Federal provision at 30 CFR 800.15(c) where a permittee may request reduction of the bond amount upon submission of evidence to the regulatory authority that the method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Under this provision, bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond releases subject to the performance bond release requirements at 30 CFR 800.40. Therefore, Indiana's proposed new section at 1C 14–34–6–14.3 would not render Indiana's statutes less stringent than SMCRA or less effective than the Federal regulations.

The Director notes that Indiana's reference to the term ''subsection'' in the proposed statute should be ''section'' and is requesting Indiana to correct this error.

5. IC 14–34–7–4(b) Definition of Current Liabilities

Indiana proposes to revise IC 14–34–7–4(b) by making nonsubstantive language changes, designating the existing provision as (b)(1), and adding (b)(2). Subsection (b)(2 specifies that ''current liabilities'' also include dividends payable on preferred stock within one (1) quarter, if declared, or one (1) year, if a pattern of declaring dividends each quarter is apparent from past business practice. Existing IC 14–34–7–4(b) is substantially the same as the Federal definition of ''current liabilities'' at 30 CFR 800.23(a). Indiana's proposed additional language at (b)(2) would add specificity to the definition of ''current liabilities'' and would not render the State statutes less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 800.23(a).

6. IC 14–34–7–8 Information Requirements for Self-Bonding

Indiana proposes to add a provision at IC 14–34–7–8(2) that requires submission of unaudited financial statements for completed quarters in the current fiscal year not later than sixty (60) days after the end of each quarter. The Federal regulations at 30 CFR 800.23(b)(4) also require submission of such statements but do not set a specific time for submittal. Indiana's proposed requirement clarifies when the statements are to be submitted, and it will not render the State statutes less stringent than SMCRA or less effective than the Federal regulations.

C. Revisions to Indiana's Statutes With No Corresponding Federal Provisions

1. IC 14–8–2–49.5 and IC 14–34–7–0.6 Definition of Comparative Balance Sheet

Indiana proposes to add a definition of ''Comparative balance sheet'' to its statutes. At IC 14–8–2–49.5, Indiana proposes to add language as follows.

''Comparative balance sheet'', for purposes of IC 14–34–7, has the meaning set forth in IC 14–34–7–0.6.

At IC 14–34–7–0.6, Indiana proposes to add the following definition of ''Comparative balance sheet.''

As used in this chapter, *comparative balance sheet* means items accounts from a number of the operator's successive yearly balance sheets arranged side by side in a single statement.

Although SMCRA and the Federal regulations do not include a definition for ''comparative balance sheet,'' the term, as defined by Indiana, is a generally accepted accounting term. Therefore, the Director is approving Indiana's proposed definitions at IC 14–8–2–49.5 and IC 14–34–7–0.6. The Director notes that an apparent typographical error exists in the proposed definition at IC 14–8–2–49.5, where ''item accounts'' should read ''item amounts,'' and is requesting Indiana to correct this error.

2. IC 14–8–2–49.6 and IC 14–34–7–0.7 Definition of Comparative Income Statement

Indiana proposes to add a definition of ''Comparative income statement'' to its statutes. At IC 14–8–2–49.6, Indiana proposes to add language as follows.

''Comparative income statement'', for purposes of IC 14–34–7, has the meaning set forth in IC 14–34–7–0.7.

At IC 14–34–7–0.7, Indiana proposes to add the following definition of ''Comparative income statement.''

As used in this chapter *comparative income statement* means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement.

Although SMCRA and the Federal regulations do not include a definition for ''comparative income statement,'' the term, as defined by Indiana, is a generally accepted accounting term. Therefore, the Director is approving Indiana's proposed definitions at IC 14–8–2–49.6 and IC 14–34–7–0.7.

3. IC 14–34–5–10 Affected Area Status Reports

Indiana proposes to amend IC 14–34–5–10, pertaining to affected area status reports, by removing time specific submittal requirements, adding language authorizing the State to adopt content and data filing requirements under its regulations, and making nonsubstantive wording changes.

There are no counterpart provisions in the Federal regulations that require submission of affected area status reports; however, the States' proposed changes at IC 14–34–5–10 are not inconsistent with SMCRA or less effective than the Federal regulations.

4. IC 14–34–6–14.6 Duplicate Bond Coverage/Reclamation Agreements

At IC 14–34–6–14.6, Indiana proposed to add a new section to its statutes. Subsection (a) specifies that the proposed section applies when an applicant or permittee submits a bond, deposit, or letter of credit covering an area that has been disturbed by surface coal mining activities and is covered by another bond, deposit, or letter of credit previously submitted by another permittee.

Indiana's proposed provision at subsection (b) allows release of the previously submitted bond, deposit, or letter of credit when the director of IDNR accepts the bond, deposit, or letter of credit submitted by the new applicant or permittee for the previously disturbed area. The new bond, deposit, or letter of credit is subject to the bonding standards of IC 14–34–6, sections 7 through 14. In its September 13, 1996, letter to Indiana, OSM expressed concern that as proposed at IC 14–34–6–14(6), the first bond could be released prior to issuance of the second permit, and if for some reason a permit is never issued to the second operator, the state could be left with an unreclaimed and unbonded site, since the previously submitted bond would have already been released. In its October 25, 1996, response to OSM's letter, Indiana explained that for the purposes of bond, the term ''accept'' at proposed IC 14–34–6–14.6(b)(1) coincides with permit approval. The new bond would not be approved until the replacement permit was approved an no previous bond would be considered for release until that time. Also, both companies would have to agree as to the acreage size and location and an acceptance of liability statement would have to be received from the new permittee. Indiana supported its explanation by referring to its rule at 310 IAC 12–4–15 which states that the director of IDNR shall not release existing performance bonds until the permittee has submitted and the director of IDNR has approved acceptable replacement performance bonds. Indiana's proposed provision at subsection (b) is not inconsistent with the Federal regulations at 30 CFR Part 800 that require permit areas to be adequately bonded or the bonding requirements at 30 CFR 774.17 for transfer, assignment, or sale of permit rights. The Director is approving subsection (b) with the understanding that Indiana will place conditions on the permit of the second permittee that require assumption of the reclamation obligation of the previous permittee, that specifically give notice to the second permittee of the State's intention to release the previous permittee's bond in reliance on the assumption of liability by the second permittee, and that require any surety bond or other contract securing the reclamation obligation of the second permittee to reflect the assumption of liability and the intent to release the previous bond.

Indiana's proposed provision at subsection (c) allows two or more persons who are applicants or permittees, when each has filed a bond, deposit, or letter of credit covering the same area, to enter into an agreement, subject to approval by the director of IDNR, that allocates responsibility among the persons for the reclamation of the area. There are no counterpart provision in the Federal regulations that address overlapping permit areas that are double-bonded, but this proposed provision is not inconsistent with the Federal regulations at 30 CFR Part 800 that require permit areas, or increments of permit areas, to be adequately bonded.

Based on the above discussion, the Director is approving IC 14–34–6–14.6.

5. IC 14–34–7–4(d)–(g) Conditions for Self-Bonding

On its own initiative, the State proposed to revise IC 14–34–7–4 by making subsection (d) subject to new subsection (f), which pertains to requirements for an applicant to meet industry norms for the financial ratio tests, and by specifying at subsection (d) that the qualifying criteria in Section 4 must be met by the applicant at the time the self-bond is accepted [approved by the State as the bond].

The State also proposes to expand the existing standard qualifying criteria at subsection (d). The State is adding criteria at (d)(3), (4), (5), and (6) that require an applicant not to be subject to any outstanding cessation order issued under the State program or the Surface Mining Control and Reclamation Act, not owe any civil penalties or fees, not be delinquent in paying penalties or fees, and not be listed on the Applicant Violator system (AVS).

The State is adding a provision at (d)(7)(A), previously codified as (d)(3)(A), that requires an applicant to identify the bond rating service [Moody's or Standard and Poor's] that rated its bond issues. The State is adding a provision to (d)(7)(B), and (C), previously codified a (d)(3)(B) and (C), that requires an applicant to document its ratio values for the ratio of current assets to current liabilities and the ratio of total liabilities net worth for the four (4) years preceding the application, in addition to the existing requirement to demonstrate that the applicant met the required values for the year [fiscal year] immediately preceding the application. The State is adding subsection (e) that requires the applicant to add the proposed self-bond amount, excluding any amount currently accrued for reclamation that appears on the balance sheet, to either current liabilities or total liabilities before calculating the required financial ratio tests included in subsection (d)(7)(B) or (d)(7)(C).

The provisions added at subsections (d)(3), (4), (5), (6), and (7) that address an applicant's compliance status are no less effective than the Federal regulations. These proposals are consistent with OSM's preamble to the final self-bonding regulations (48 FR 36418, August 10, 1983) where in response to comments OSM stated that it ''agrees that the regulatory authority should consider the operator's past history of compliance and patterns of violation in deciding whether to allow an operator to self-bond. OSM does not intend to establish regulations which would detail how a history of compliance should be judged, however, and leaves this to the regulatory authority who has the final responsibility to accept or reject an application to self-bond.'' The proposed addition to subsection (d)(7)(A) requiring the applicant to identify which rating company rated the applicant's bonds would provide the State with more detailed information about the bond applicant's bond rating.

The State proposes to add new requirements at subsection (d)(8)(C) and (D), previously subsection (d)(4), that require an application to include comparative income statements and comparative balance sheets for a five-year period preceding the application, a list of liens filed against any assets of the applicant in any jurisdiction in the United States for an amount that is more than 2 percent of the applicant's net worth, a list of every action pending against the applicant, a list of every unsatisfied judgment rendered against the applicant within the seven years preceding the application, and a list of any petitions or bankruptcy actions against the applicant. under Indiana's proposed action at subsection (g), the State is requiring details about the listed liens, actions, and petitions such as jurisdiction, case number, parties, and status.

The proposed additional information that must be submitted with an application by the applicant or the applicant's corporate guarantor at subsection (d)(8)(C) and (D) is not inconsistent with the Federal regulation at 30 CFR 800.23(b)(4)(iii) that allows a regulatory authority to require additional unaudited information.

The State is adding subsection (f) that requires an applicant's financial ratios to be at least as favorable as those reported by Dun and Bradstreet's report of ''Industry Norms and Key Business Ratios.''

The proposed addition at subsection (f) requires that an applicant's key business ratios [as reported by Dun & Bradstreet] must be ''at least as favorable as those listed for the medium performers in the Dun and Bradstreet listing of Industry Norms and Key Business Ratios.'' This requirements is in addition to the requirements at subsections (d)(7)(B) and (C) for applicants to meet the standard financial tests of at least 1.2:1 for the ratio of current assets to current liabilities and not more than 2.5:1 for the ratio of total liabilities to net worth. Comparing an applicant to its industry norms would provide the State with information about how the applicant currently compares with its industry and can be useful in seeing financial trends.

In its October 25, 1996, response to OSM's letter dated September 13, 1996, the State explains and reaffirms that the qualifying criteria of the existing rules at subsections (d)(7)(B)(ii) and (iii) take precedence over the proposed qualifying criteria at subsection (f). OSM's letter recognized that the criteria proposed at subsection (f) are in addition to the criteria at subsection (d) but suggested that the State clarify that the criteria at subsection (d) would be the true qualifying criteria in any case. Given the financial criteria at subsection (d) must be met at a minimum, the State's proposal is no less effective than the Federal regulations.

OSM recommends that the State clarify which industry norms the applicant is required to meet at subsection (f). The Dun and Bradstreet industry norms report includes 15 different ratios. In addition, specifying time periods during which the norms must be met is important because the norms are dynamic and are updated periodically in the Dun and Bradstreet database. A cautious approach to comparing an applicant with industry norms is recommended since the norms could indicate an overall weak industry.

Based upon the above discussions, the Director finds that the proposed revisions to Indiana's self-bonding criteria at IC 14–34–7–4(d) through (g) are not inconsistent with the Federal requirements for self-bonding at 30 CFR 800.23(b), and the Director is approving them.

6. IC 14–34–7–4.1 Self-Bonding Reapplication and Replacement

The State proposes to add requirements at IC 14–34–7–4.1 for self-bonded permittees to either replace existing self-bonds in effect on January 1, 1995, with another allowable form of bond or reapply for self-bonding under the revised, proposed self-bonding provisions. If an application is not accepted under the proposed provisions, then the self-bond must be replaced with another allowable form of bond.

There is no direct Federal counterpart to the State proposal revisions; however, that part of the State's proposal that pertains to requirements for existing self-bonded permittees who no longer meet the criteria is not inconsistent with 30 CFR 800.23(g) which requires a self-bond to be replaced within 90 days of the permittee becoming aware that it no longer meets the criteria for self-bonding. Therefore, the Director is approving this new section.

7. IC 14–34–7–7 Self-Bonding Indemnity Agreement

The State proposes to add a provision at section 7(1) that requires all parties to the indemnity agreement to be liable to the director of IDNR for the costs of pursuing forfeiture of any self-bond posted by the permittee and liable for the costs of reclamation that are in excess of the forfeited self-bond amount. At section 7(6), the State is adding a requirement that all bonds and guarantees must be indemnified corporately and personally by all principals.

The existing State statute is substantively the same as the Federal counterpart regulations that require all parties bound to the agreement to execute an indemnity agreement for the sum of the self-bond. The State statute and Federal regulations require that the indemnity agreement be executed by two authorized corporate officers of all the parties bound and that the applicant or corporate guarantor must complete the approved reclamation plan or pay to the director of IDNR the amount necessary to complete the approved reclamation plan.

The State's proposed additional requirements for the self-bonding indemnity agreement do not have direct Federal counterpart requirements. However, the State's proposed requirements are not inconsistent with or less effective than the Federal regulations at 30 CFR 800.23(e) and 30 CFR 800.50(d)(1), and the Director is approving the proposed revisions at IC 14–34–7–7. Requiring that all self-bonds and guarantees be indemnified corporately and personally by all principals affords the State additional protection against nonpayment in the event of bond forfeiture.

8. IC 14–34–7–7.1 Collaterized Self-Bonds

As also discussed in finding No. B.1, Indiana proposes to revise its program to allow the use of collateral for securing self-bonds. The existing State statute requires that self-bonding applicants qualify on the basis of financial criteria at IC 14–34–7–4 without additional collateral. The Federal regulations at 30 CFR 800.23 do not contain a counterpart to Indiana's revised regulations; however, a similar proposal was approved for the Wyoming program on July 25, 1990 (55 CFR 30221).

The State proposes to allow a self-bonding applicant who cannot qualify on the basis of meeting the financial criteria or limitations at IC 14–34–7–4 to offer collateral in the form of real property, government-backed securities, and/or personal property. The real property must be located in Indiana, and a perfected, first-lien security interest made in favor of and deposited with the IDNR. Securities must be backed by the United States or the state government, and they must be endorsed to the order of and placed in the possession of the director of IDNR. The personal property must be located within the State, owned by the operator, and valued at more than $1 million per property unit. In addition to the offer of collateral, the applicant must execute an indemnity agreement that complies with IC 14–34–7–7.

For any property collateral offered to support a self-bond, the property must be valued at the difference between the fair market value of the property and reasonable expenses the IDNR anticipates incurring in selling the property. The fair market value must be determined by an appraiser proposed by the applicant. A description of the property and a statement of any liens, encumbrances, or adverse judgments imposed on the property and any pending litigation relating to the property is also required.

Real property may not include lands that are in the process of being mined or reclaimed or lands that are the subject of a mining application. Although, the operator may offer land that has been released from bond. Securities offered as collateral may include only securities that meet the definition of collateral at IC 14–34–7–0.5. Personal property must be in the possession of the operator; must be encumbered; and not include property already being used as collateral, goods that the operator sells in the ordinary course of business, fixtures, or certificates of deposit that are not federally insured. Evidence of ownership of property offered as collateral must be submitted in specified forms.

In order to offer personal property collateral, Indiana requires the applicant to satisfy the financial requirements in IC 14–34–7–4(d)(7) (B) and (C), which are two of the standard financial tests in the Indiana program. This proposal is similar to the approved Wyoming self-bonding program except that in the Wyoming program personal property collateral is only accepted when the applicant cannot meet the standard tests but can meet an alternative set of financial tests.

If personal property is accepted as collateral, quarterly and annual maintenance reports from the applicant are required. The director of IDNR may also require quarterly or annual inspections of the personal property. The director of IDNR shall require possession of the personal property or a mortgage or security agreement executed by the applicant with the right and power to sell or otherwise dispose of the property so as to ensure reclamation. While in possession of the IDNR, any income received from the collateral shall be remitted to the applicant. An applicant may substitute other property for any property accepted and held as collateral under specified conditions. If collateral is posted to support a self-bond, the applicant shall notify all persons that have an interest in the collateral and provide copies of the notices to director of IDNR.

In its October 13, 1996, letter to Indiana, OSM expressed concern regarding three provisions in the State's collateral proposal that appeared to be less effective than the Federal regulations at 30 CFR 800.21 for collateral bonding.

(1) To be no less effective than the Federal regulations, the State needs to require that the market value of the individual or combined collateral (adjusted by a margin of value for the State's cost of liquidation) equals or exceeds the required bond amount under the self-bond indemnity agreement. In its October 25, 1996, response, the State explained that it intended to implement its proposed statute at section 7.1(b)(1) so that the cost of liquidating the property used as collateral will be deducted from the market value when determining the bonding value of the collateral. Given that the State will implement the proposed section to require that the collateral value, less liquidation costs, equal the required bond amount, this portion of the proposal is consistent with the Federal requirements at 30 CFR 800.21 and therefore no less effective than the Federal regulations.

(2) To be no less effective than the Federal regulations for real property collateral at 30 CFR 800.21(c)(2), the State must require that real property be appraised by an independent certified appraiser. In its response to OSM's concerns, the State indicated that while not stated, it intends to only accept appraisers who are ''professionally qualified.'' According to the Indiana Real Estate Appraisal Licensurer and Certification Board, Indiana statutes at IC 25–34.1–8–10 requires that appraisers in Indiana be licensed and certified. On September 22, 1997 (Administrative Record No. IND–1591), OSM discussed this issue with Indiana. Indiana stated that coal operators are required to comply with all Indiana rules and statutes, and they will be required to comply with IC 25–34.1–8–10. Therefore, Indiana's proposal is consistent with SMCRA and no less effective than the Federal regulations at 30 CFR 800.21(c)(2).

(3) The State's proposed statute at subsection (b)(2) requires that real property liens and encumbrances be disclosed in the application. This implies that the State has discretion to accept encumbered real property. In its letter, OSM stated that to be no less effective than the Federal regulations on real property collateral, the State must require that any real property accepted as collateral be unencumbered. In its response to this concern, the State explained that it does not intend to accept property that is encumbered and that it included the disclosure requirement as an aid to learning of liens and other encumbrances that might not otherwise be apparent (so as to prohibit acceptance of encumbered property). While the language is not clear in this regard, the State indicated that it will implement this proposal so that only unencumbered property is acceptable as collateral. Therefore, the proposal is consistent with SMCRA and no less effective than the Federal regulations at 30 CFR 800.21(c).

The Director finds that Indiana's proposed provisions at IC 14–34–7–7.1 are not inconsistent with the Federal regulations at 30 CFR 800.23 concerning self-bonding and are no less effective than the Federal regulations at 30 CFR 800.21 concerning collateral bonds. Therefore, the Director is approving Indiana's proposed provisions at IC 14–34–7–7.1.

9. IC 14–34–7–10 Self-Bonding Report Requirements

At IC 14–34–7–10, Indiana proposes to add a new section to its statutes to require that self-bonding applicants provide the director of IDNR with an independent public accounting consultant's report if requested. This is in addition to the financial statements and a report prepared by an independent certified public accountant that is required under IC 14–34–7–4(d)(8) and IC 14–34–7–8. The report shall be provided within 90 days after the applicant is notified that the report is required. The consultant must verify that the financial information required under IC 14–34–7–4 was prepared in accordance with generally accepted accounting principles and that the accounting principles were applied consistently for each year of the period for which the information is submitted. The consultant must also state the amount and reason for any restatement of the financial information that is necessary to meet the consistency requirement. Finally, the consultant must state whether any information reviewed would lead him to conclude that the applicant would not meet the requirements of IC 14–34–7–4 at the end of each of the three fiscal years ending after the month the report is completed. This report may also be required after the applicant's self-bond is accepted, but not more than once every three years unless the consultant cannot project the applicant's ability to meet the self-bonding financial criteria for each of the three fiscal years. If the consultant is unable to conclude that the applicant would meet the requirements of IC 14–34–7–4 for each of the three fiscal years, the applicant must submit an updated report annually. If the applicant fails to submit a report, the director of IDNR shall refuse to accept the self-bond until the applicant files the report. If a permittee who has posted a self-bond fails to submit a report when required by the director of IDNR, the permittee may be required to post an alternate form of bond.

In its letter of October 30, 1996 (Administrative Record No. IND–1545), Indiana indicated that the purpose of the option of financial projections is intended to give the director of IDNR a greater understanding for any future problems that may be anticipated that could influence the applicant's financial stability and is viewed as another tool for assessing risk.

There are no Federal counterpart provisions for a qualified independent public accounting consultant report that projects an applicant's future ability to meet self-bonding requirements. However, the State's proposed provisions are not inconsistent with the Federal regulations at 30 CFR 800.23(b)(4)(i) that require that an applicant's financial statements be audited by an independent certified public accountant with no adverse opinion or 30 CFR 800.23(f) that allow regulatory authorities to require updated financial information and independent certified public accountants' reports annually. Therefore, considering that the provisions in IC 14–34–7–10 are in addition to the State's counterparts to 30 CFR 800.23(b)(4)(i) and (f), the Director is approving them.

10. IC 14–34–7–11 Self-Bond Coverage Requirements

Indiana proposes to add provisions requiring permit increments that are self-bonded to be 100 percent self-bonded. For example, bond coverage of a permit increment could not consist of a combination of a surety bond and a self-bond. This is not inconsistent with SMCRA or the Federal regulations at 30 CFR Part 800 which allow permit increment bonding and require the regulatory authority to prescribe by regulation terms and conditions for performance bonds, including self-bonds.

The State also proposes to allow self-bond coverage on areas where as of July 1, 1995, grading has been deferred, or the approved deferral extended. However, areas where grading was deferred after July 1, 1995, may not be bonded by self-bonds or the Indiana bond pool. The State proposes to remove the self-bonding and bond pool option from companies that have been given approval to defer grading of an area in order to assure more long-term certainty by requiring other forms of bond such as corporate surety bonds for grading-deferred areas. There are no Federal counterpart regulations for bond coverage of grading deferral areas. The State's bonding provisions at this section are not inconsistent with SMCRA or the Federal regulations at 30 CFR 800.23 on self-bonding in that self-bonding is a discretionary bonding program intended for financially strong companies that are in compliance with the statute, permit, and regulations. Therefore, the Director approves Indiana's proposed statute at IC 14–34–7–11.

11. IC 14–34–7–12 Self-Bond Phase I Grading Release Requirements

Indiana proposes additions to the self-bonding statutes that restrict the use of self-bonding when an area requires Phase I reclamation or is eligible for a Phase I grading release but the permittee has not applied for the release before the ''second November 1 after the year in which the coal was removed from the site covered by the self-bond.'' If this occurs, or if a release application is filed within the required time frame but not approved, then the permittee must replace the self-bond with another form of bond within 90 days. Permittees must also submit annual reports of acres under self-bond that have been affected and reclaimed.

Indiana proposes to exempt acreage and structures used to facilitate active mining and reclamation operations from the requirements of this section.

The State's proposal restricts the use of self-bonding for areas that have been used for fly or bottom ash disposal, flue gas byproducts, or coal processing wastes to 10 years after disturbance or after the acceptance of the self-bond, whichever is later. An alternative form of bond must be posted for the area within 90 days of its becoming ineligible for self-bonding.

If Indiana determines that an area is no longer eligible for self-bonding and an alternative form of bond is posted, the area is never again eligible for self-bonding and may not be bonded by Indiana's surface coal mine reclamation bond pool.

There are no direct counterpart provisions in SMCRA or the Federal regulations. The Director finds that the State's proposal is not inconsistent with SMCRA or the Federal regulations at 30 CFR 800.23 that allow regulatory authorities to accept self-bonds, and she is approving IC 14–34–7–12.

12. IC 14–34–7–13

Indiana proposes to add the following new section at IC 14–34–7–13.

For purposes of IC 1–1–1–8, if the amendments to IC 14–34–7–1, as amended by SEA 125–1995, are held invalid or otherwise unenforceable, the other amendments to IC 14–34–7 made by SEA 125–1995 are also void.

There are no counterparts to this proposal in SMCRA or the Federal regulations. However, as discussed in the findings above, the proposed amendments to IC 14–34–7 have no direct Federal counterparts. Therefore, the proposal to declare them void under the circumstances specified would not render the Indiana program less stringent than SMCRA or less effective than the Federal regulations. However, in accordance with 30 CFR 732.17(b)(3), Indiana must notify OSM of any actions it takes because of IC 14–34–7–13 that would effect or change any of the proposals at IC 14–34–7 that are being approved in this document.

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. Comments were received from the Indiana Coal Council and the National Coal Association. These comments have been addressed in finding No. III.B.3. 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 Federal agencies responded.

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 (12 U.S.C. 7401 *et seq.*).

None of the revisions that Indiana proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1515). It did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IND–1515). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director is approving with certain exceptions, the proposed amendment as submitted by Indiana on September 11, 1995.

The Director is not approving, as discussed in finding No. B.3, the new language Indiana is proposing to add to its definition of ''liabilities'' at IC 14–34–7–1 that would allow companies to exclude FAS 106 obligations from liabilities for the purpose of applying for self-bonding. Furthermore, the Director is requiring Indiana to remove this language and to notify OSM when the removal is completed.

The Director is approving, as discussed in finding No. C.4, IC 14–34–6–14.6(b) with the understanding that Indiana will place conditions on the permit of the second permittee that require assumption of the reclamation obligation of the previous permittee, that specifically give notice to the second permittee of the State's intention to release the previous permittee's bond in reliance on the assumption of liability by the second permittee, and that require any surety bond or other contract securing the reclamation obligation of the second permittee to reflect the assumption of liability and the intent to release the previous bond.

The Director notes, as discussed in finding No. B.4, that Indiana's reference to the term ''subsection'' in its statute at IC 14–34–6–14.3 should be ''section'' and, as discussed in finding No. C.1, Indiana's reference to ''item accounts'' in its definition at IC 14–34–7–0.6 should be ''item amounts.''

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 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (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.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 20, 1997.

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 in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
September 11, 1995	November 4, 1997	IC 14–8–2–42.5, –49.5, –49.6, –274.5; 14–34–5–10; 14–34–6–14.3, –14.6; 14–34–7–0.5, –0.6, –0.7, –2.5, –4 (b), (d) through (g), –4.1, –5, –7, –7.1, –8, –9, –10, –11, –12, –13.

[FR Doc. 97–29132 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting a system of records identified as DUSP 11, entitled POW/Missing Personnel Office Files. The exemption is needed to protect information properly classified under E.O. 12958, Classified National Security Information.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970.