

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 914**

[IN-142-FOR]

Surface Coal Mining and Reclamation Operations on Federal Lands; State-Federal Cooperative Agreements; Indiana

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to adopt a cooperative agreement between the Department of the Interior and the State of Indiana. This agreement will allow Indiana, under the permanent regulatory program, to regulate surface coal mining and reclamation operations on Federal lands in Indiana. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides for this type of agreement. This notice of proposed rulemaking gives you information on the terms of the proposed cooperative agreement.

DATES: *Written Comments.* We must receive written comments by 4:00 p.m., E.S.T., April 9, 1999.

Public Hearings. If requested, we will hold a public hearing on the proposed rule on March 25, 1999. We must receive your requests to speak at the hearing by 4:00 p.m., E.S.T., on March 1, 1999. If you wish to attend a hearing but not testify, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that we will hold a hearing.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry your comments to Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204-1521. You may also comment via the Internet to OSM's Administrative Record at: agilmore@mcrwg.osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date and time for any public hearing if one is held. If you are disabled and require special accommodation to attend a public

hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Copies of the Indiana program, the proposed cooperative agreement, 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.

Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204-1521, Telephone: (317) 226-6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232-1547.

You may receive one free copy of the proposed agreement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: 317-226-6700. E-mail: agilmore@mcrwg.osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background of the Indiana Program
- III. Description of the Proposed Cooperative Agreement
- IV. Procedural Determinations

I. Public Comment Procedures*Written Comments*

If you are submitting written comments on the proposed rule, please be specific, limit your comments to issues pertinent to the proposed rule, and explain the reason for your recommendations. Except for comments provided electronically, please submit three copies of your comments, if possible, to our Administrative Record (see **ADDRESSES**). All comments sent to the Administrative Record will be logged into the administrative record for the rulemaking. However, we will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to addresses other than those listed in **ADDRESSES** may not be logged in.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: IN-142-FOR" and your name and return address in your Internet message. If you do not receive a confirmation from the system

that we have received your Internet message, contact us by telephone at 317-226-6700. We will make comments, including names and addresses of respondents, available for public review during regular business hours. You may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on March 1, 1999. We will arrange, with you, the location and time of the hearing. If no one requests an opportunity to speak at a public hearing, we will not hold one.

We request that you file a written statement at the time of the hearing. It will greatly assist the transcriber. If you submit written statements in advance of the hearing, this will allow us to prepare adequate responses and appropriate questions.

We will continue the public hearing on the specified date until all persons scheduled to speak have spoken. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be allowed to speak 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 spoken.

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. If you wish to meet with us to discuss the proposed agreement, you 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, notices of meetings will be posted at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

II. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find

background information on the Indiana program including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32071). Later actions concerning the conditions of approval and program amendments are found at 30 CFR 914.10, 914.15, and 914.16.

III. Description of the Proposed Cooperative Agreement

By a letter dated March 10, 1998 (Administrative Record No. IND-1598), from the Indiana Department of Natural Resources, Indiana submitted a request for a State-Federal cooperative agreement under the provisions of 30 CFR 745.11. The purpose of the proposed cooperative agreement (Agreement), is to give Indiana the primary authority to administer its approved permanent regulatory program on Federal lands.

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the regulations at 30 CFR Part 745 allow a State and the Secretary of the Interior to enter into a permanent program Agreement if the State has an approved State program for regulating surface coal mining and reclamation operations on non-Federal and non-Indian lands. SMCRA authorizes permanent program Agreements under section 523(c) which provides that "[a]ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to implement such a cooperative agreement in accordance with the provision of this Act."

Section 745.11(b)(1) through (8) of our regulations require States to submit certain information with a request for a permanent program cooperative agreement, if the information has not been previously submitted in the State program. Indiana previously submitted much of the information relating to the budget, staffing, and equipment necessary for performing inspections at surface coal mining and reclamation operations on Federal lands. In addition, Indiana submitted a written certification from the Chief Legal Counsel of the Indiana Department of Natural Resources stating that the State does not have statutory, regulatory, or other legal constraint which would limit the ability of the Indiana Department of Natural Resources to fully comply with the terms of the proposed Agreement,

section 523(c) of SMCRA, and 30 CFR Part 745.

We have included the full text of the proposed agreement as part of this proposed rulemaking. The proposed cooperative agreement may change as a result of public comment and/or further discussion with the State of Indiana. The proposed agreement, as submitted by Indiana, has sixteen articles. A brief summary of the articles appears below.

Article I: Introduction, Purpose and Responsible Agencies. This article explains the legal authority for the Agreement and states that the Agreement allows Indiana to regulate surface coal mining and reclamation operations on Federal lands in Indiana. The article designates the Natural Resource Commission (NRC) and the Division of Reclamation (DOR) of the Indiana Department of Natural Resources as the agencies responsible for administering the Agreement on behalf of the Governor of Indiana (Governor). It also designates OSM as the agency responsible for administering the Agreement on behalf of the Secretary of the Department of the Interior (Secretary). Indiana designated NRC and DOR as the administrative bodies for the approved Regulatory Program in Indiana.

Article II: Effective Date. This article provides that after signature by the Secretary and the Governor, the Agreement will become effective 30 days after publication in the **Federal Register** as a final rule.

Article III: Definitions. This article provides that the terms and phrases used in the Agreement will have the same meaning as those in SMCRA, the OSM approved State Act (Indiana Code (I.C.) 14-34), and the rules and regulations set forth as a result of those acts. The article also specifies that the State will use the definitions in its approved State program if State and Federal definitions conflict.

Article IV: Applicability. This article states that the laws, regulations, terms and conditions of Indiana's approved State program are applicable to Federal lands in Indiana except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4, 740.11(a), 745.13, and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements. This article certifies that DOR and NRC have the authority under State law to carry out the terms of the Agreement. It also establishes the procedures for funding DOR's and NRC's responsibilities under the Agreement and the right of DOR or OSM to terminate the agreement if OSM cannot adequately fund the program. This article provides for DOR and OSM

to exchange information and for DOR to report annually to OSM. It also requires DOR to have adequate personnel with sufficient equipment and facilities to carry out the requirements of the program. Finally, this article discusses how DOR will determine the amount of the permit application fee and how DOR will handle funds generated from permit application fees, civil penalties, and fines collected from operations on Federal lands.

Article VI: Review of Permit Application Packages. Paragraphs A through C of Article VI generally describe the procedures that the State and OSM will follow in the review and analysis of a permit application package (PAP) for operations on Federal lands. The term "permit application package" is defined under 30 CFR 740.5. DOR will assume primary responsibility for the review of a PAP. Where leased Federal coal is involved, OSM will prepare a mine plan decision document and obtain the Secretary's approval for the document.

The article also establishes guidelines for material to be submitted in the PAP and the procedures that OSM and DOR will use in reviewing the PAP. The article further spells out the coordination between DOR, OSM, and other Federal Agencies in conducting the reviews. Finally, the article provides guidelines for making a decision on the permit application and informing the applicable parties of the decision. The review procedures for permit revisions, renewals and the transfer, assignment or sale of permit rights are also discussed.

Article VII: Inspections. This article specifies that DOR will conduct inspections of the operations on Federal lands and will prepare and file inspection reports documenting the inspection according to the State program. DOR will also be the point of contact and the primary inspection authority in dealing with these operators. However, authorized Federal or State agencies will be allowed to conduct necessary inspections for purposes other than those covered by the Agreement. Finally, the article discusses procedures that OSM will follow when handling citizen complaints that it receives pertaining to imminent danger to the public health and safety or to significant imminent environmental harm to land, air or water resources.

Article VIII: Enforcement. This article deals with DOR's responsibility for issuing enforcement actions resulting from violations on surface coal mining and reclamation sites on Federal lands. DOR will have the lead in issuing enforcement actions except in cases

where Federal laws and Executive Orders reserve these rights to the Secretary. The article provides for DOR and OSM to exchange information concerning enforcement actions and to be mutually available to serve as witnesses in enforcement actions taken by either party.

Article IX: Bonds. This article specifies the procedures that a permittee must follow to get a performance bond to cover the operator's liability under the Act and the State program. The article discusses the assignment of the bond if the Agreement is terminated and the procedures for releasing and forfeiting bond. Finally the article states that if the operator submits a performance bond, this bond does not satisfy the requirements for the operator to also submit a Federal lease bond or lessee protection bond in certain circumstances.

Article X. Designating Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, Valid Existing Rights (VER), and Compatibility Determinations. The unsuitably petitions portion of the article only allows the Secretary to designate Federal lands as unsuitable for mining. The article further states the procedures DOR or OSM must follow if they receive a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could affect adjacent Federal or non-Federal lands. The VER and Compatibility Determinations portion of the article requires OSM to make VER determinations on Federal lands where proposed operations are not allowed or are limited by Section 522(e)(1) of the Act. This article also requires OSM to make determinations of compatibility under the provisions of section 522(e)(2) of the Act.

Article XI: Termination of Cooperative Agreement. This article allows the Governor or the Secretary to terminate the Agreement under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement. This article allows the Governor and the Secretary to reinstate the Agreement, under the provisions of 30 CFR 745.16, if it is terminated in whole or part.

Article XIII: Amendment of Cooperative Agreement. This article provides that the Governor and the Secretary, under the provisions of 30 CFR 745.14, may amend the Agreement by mutual consent.

Article XIV: Changes in State or Federal Standards. This article describes the procedures the Governor or the Secretary must follow when they

declare new or revised performance or reclamation requirements or enforcement and administrative procedures.

Article XV: Changes in Personnel and Organization. Under the terms of this article, each party to the Agreement must notify the other of changes in personnel, organization and funding, or other changes that may affect the implementation of the Agreement.

Article XVI: Reservation of Rights. This article provides that the agreement does not cause the State or the Secretary to waive any rights they may have under laws other than SMCRA or their regulations, including but not limited to those listed in Appendix A to the Agreement.

IV. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies 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.*). This rule will establish an Agreement between the Department of the Interior and the State of Indiana. The Agreement does not impose any new substantive requirements on the coal industry; it merely authorizes the State to regulate surface coal mining and reclamation activities on Federal lands in Indiana in lieu of the Federal government.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. The rule affects only the State of Indiana and the costs of carrying out the functions under the Agreement are offset by grants from the Federal government.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers. The functions being performed by the State under the Agreement are offset by grants from the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule establishes a cooperative agreement at the request of the State of Indiana and will result in the delegation of authority to the State. The cost to the State of performing the duties being delegated are offset by a grant from the Federal government. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule establishes an Agreement at the request of the State of Indiana and will result in the delegation of authority to the State. A takings implication assessment is not required.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The rule establishes an Agreement at the request of the State of Indiana and will result in the delegation of authority to the State. Therefore, a Federalism assessment is not required.

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

9. National Environmental Policy Act

An environmental impact statement is not required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that the implementation of a Federal lands program under the provision of section 523 of SMCRA does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

10. Author

The principal author of this rule is Andrew R. Gilmore, Director, Office of Surface Mining, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204-1521.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 20, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR part 914 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 914.30 is added to read as follows:

§ 914.30 State-Federal Cooperative Agreement.

State-Federal Cooperative Agreement

The Governor of the State of Indiana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsible Agencies

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under section 503 of SMCRA,

30 U.S.C. 1253, to elect to enter into an Agreement for the State regulation of surface coal mining and reclamation operations (including surface operations and surface impacts incident to underground mining operations) on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR Part 3400 and surface coal mining and reclamation operations in Indiana on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and State and Federal laws governing such activities and the Indiana State Program (Program).

B. *Purposes:* The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Part 3400; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Indiana in accordance with SMCRA, the Program, and this Agreement.

C. *Responsible Administrative Agencies:* The Natural Resource Commission (NRC) and the Division of Reclamation (DOR) of the Indiana Department of Natural Resources will be responsible for administering this Agreement on behalf of the Governor under the approved Indiana Regulatory Program. The Office of Surface and Mining Reclamation and Enforcement (OSM) will administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the **Federal Register** as a final rule: This Agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in SMCRA, 30 CFR Parts 700, 701 and 740, the Program, including the OSM approved State Act (I.C. 14-34), and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Indiana except as otherwise stated in this Agreement. SMCRA, 30 CFR 740.4, 740.11(a) and 745.13, and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency:* DOR and NRC have and will continue to have the authority under State law to carry out this Agreement.

B. Funds:

1. Upon application by DOR and subject to appropriations, OSM will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of SMCRA, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOR and NRC in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement.

2. OSM's Indianapolis Field Office and OSM's Mid-Continent Region Coordinating Center office will work with DOR to estimate the amount the Federal government would have expended for regulation of Federal lands in Indiana in the absence of this Agreement.

3. OSM and the State will discuss the OSM Federal lands cost estimate. After resolution of any issues, DOR will include the Federal lands cost estimate in the State's annual regulatory grant application submitted to OSM's Indianapolis Field Office.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimated regulatory costs for the following grant year. OSM will notify DOR as soon as possible if such projections are not acceptable.

4. If DOR applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DOR will promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Indiana are regulated in accordance with the Program. If agreement cannot be reached, either party may terminate the Agreement in accordance with Article XI of this Agreement.

5. Funds provided to the DOR under this Agreement will be adjusted in accordance with Office of Management and Budget Common Rule for Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. *Reports and Records:* DOR will make annual reports to OSM containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DOR and OSM will exchange information developed under this Agreement, except where prohibited by Federal or State law.

OSM will provide DOR with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOR comments on the report will be appended before transmission to the Congress, unless necessary to respond to a request by a date certain, or to other interested parties.

D. *Personnel:* Subject to adequate appropriations and grant awards, the DOR will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the Program.

E. *Equipment and Laboratories:* Subject to adequate appropriations and grant awards, the DOR will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies,

tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for surface coal mining and reclamation operations on Federal lands in Indiana will be determined in accordance with the approved Indiana Program. All permit fees, civil penalties and fines collected from operations on Federal lands will be retained by the State and will be deposited within the Natural Resources Reclamation Division Fund. Permit fees will be considered program income. Civil penalties and fines will not be considered program income. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees, penalties, and fines collected on such permits during the State's prior fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package

1. DOR and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to DOR. DOR will furnish OSM and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOR and will include any supplemental information required by OSM, the Federal land management agency, and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for DOR to make a determination of compliance with the Program and for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

2. For any outstanding or pending permit applications on Federal lands being processed by OSM prior to the effective date of this Agreement, OSM will maintain sole permit decision responsibility. After the final decision, all additional responsibilities shall pass to DOR pursuant to the terms of this Agreement along with any attendant fees, fines, or civil penalties therefrom.

B. Review Procedures Where There Is No Leased Federal Coal Involved

1. DOR will assume the responsibilities for review of PAPs where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4(c)(2), DOR will be responsible for obtaining, except for non-significant revisions, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOR will request such Federal agencies to furnish their findings or any requests for additional

information to DOR within 45 calendar days of the date of receipt of the PAP. OSM will assist DOR in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOR under other applicable Federal laws may be specified in working agreements between OSM and the State, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOR will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations in Indiana on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOR will review the PAP for compliance with the Program and the OSM approved State Act and regulations. DOR will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his determinations under SMCRA that cannot be delegated to the State. Some of which have been delegated to OSM.

4. OSM and DOR will coordinate with each other during the review process as needed. OSM will provide technical assistance to DOR when requested, if available resources allow. DOR will keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. OSM may provide assistance to DOR in resolving conflicts with Federal land management agencies. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DOR. OSM will have access to DOR files concerning operations on Federal lands. OSM will send to DOR copies of all resulting correspondence between OSM and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOR to carry out his responsibilities under laws other than SMCRA.

5. DOR will make a decision on approval, disapproval or conditional approval of the permit on Federal lands.

(a) Any permit issued by DOR will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conducted in compliance with the requirements of the Federal land management agency.

(b) The permit will include lawful terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOR will send a notice to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. A copy of the permit and written findings will be submitted to OSM upon request.

C. Review Procedures Where Leased Federal Coal Is Involved

1. DOR will assume the responsibilities listed in 30 CFR 740.4(c)(1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOR will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the PAP for surface coal mining and reclamation operations in Indiana where a mining plan is required, including applications for revisions, renewals and transfer sale and assignment of such permits. OSM will, at the request of the State, assist to the extent possible in this analysis and review.

DOR will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. DOR will be responsible for informing the applicant of all joint State-Federal determinations.

DOR will to the extent authorized, consult with the Federal land management agency and the Bureau of Land Management (BLM) pursuant to 30 CFR 740.4(c)(2) and (3), respectively. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3487, BLM will be the primary contact with the applicant. BLM will inform DOR of its actions and provide DOR with a copy of documentation on all decisions.

DOR will send the OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSM will send to DOR copies of all correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

DOR will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOR will request all Federal agencies to furnish their findings or any requests for additional information to DOR within 45 days of the date of receipt of the PAP. OSM will assist DOR in obtaining this information, upon request of DOR.

DOR will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4) in accordance with Article IX of this Agreement, and for review and approval under 30 CFR 740.4(c)(6) of exploration operations not subject to 43 CFR Part 3480, Subparts 3480-3487.

DOR will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7) (i)-(vii).

2. The Secretary will concurrently carry out his responsibilities under 30 CFR 740.4(a) that cannot be delegated to DOR under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will

avoid to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSM and DOR, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSM will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOR to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

3. OSM will assist DOR in carrying out DOR's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOR and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSM is assisting DOR in reviewing the PAP, furnishing to DOR the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DOR.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

4. Review of the PAP:

(a) OSM and DOR will coordinate with each other during the review process as needed. DOR will keep OSM informed of findings and technical analyses made during the review process which bear on the responsibilities of OSM or other Federal agencies. OSM will ensure that any information it receives which has a bearing on decisions regarding the PAP is promptly sent to DOR.

(b) DOR will review the PAP for compliance with the Program and State law and regulations.

(c) OSM will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSM and DOR will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSM and DOR throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSM will furnish DOR with its review comments on

the PAP and specify any requirements for additional data. To the extent practicable, DOR will provide OSM all available information that may aid OSM in preparing any findings.

(e) DOR will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOR and OSM.

(f) DOR will make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOR advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOR will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) After making its decision on the PAP, DOR will send a notice to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal land affected by operations proposed in the PAP. A copy of the written findings and the permit will also be submitted to OSM.

5. OSM will provide technical assistance to DOR when requested, if available resources allow. OSM will have access to DOR files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions; Renewals; and Transfer Assignment or Sale of Permit Rights

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOR after consultation with OSM on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSM will inform DOR within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSM and DOR will follow the procedures outlined in paragraphs C. 1. through C.5. of this Article.

2. OSM may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSM not to constitute mining plan modifications under paragraph D. 1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph

D.2. of this Article will be reviewed and approved following the procedures set forth under Indiana law and the State Program and paragraphs B.1. through B.5. of this Article.

4. Transfer, assignment or sale of permit rights on Federal lands shall be processed in accordance with Indiana law and the State Program and 30 CFR 740.13(e).

Article VII: Inspections

A. DOR will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOR will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSM a legible copy of the completed State inspection report.

C. DOR will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSM will give DOR reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection.

When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOR no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to DOR for action. The Secretary reserves the right to conduct inspections without prior notice to DOR to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DOR will have primary enforcement authority under SMCRA concerning compliance with the requirements of the Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSM and DOR, DOR will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOR will inform OSM prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSM or any joint inspection where DOR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to

comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. DOR and OSM will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOR and the Department of the Interior, including OSM, will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DOR and the Secretary will require each operator who conducts operations on Federal lands to submit a performance bond payable to the State of Indiana and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Secretary or the Federal land management agency. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOR will advise OSM of annual adjustments to the performance bond pursuant to the Program.

B. Performance bonds will be subject to release and forfeiture in accordance with the procedures and requirements of the Program. Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSM.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

Article X: Designating Land Areas Unsuited for all or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition, including the authority to make substantial legal and financial commitment determinations pursuant to section 522(a)(6) of SMCRA, is reserved to the Secretary.

2. When either DOR or OSM receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of its receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSM will coordinate with the Federal land

management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA, and received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSM will determine whether VER exists for such areas.

For private in holdings within section 522(e)(1) areas, DOR, with the consultation and concurrence of OSM, will determine whether surface coal mining operations on such lands will or will not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSM will process VER determination requests on private in holdings within the boundaries of section 522(e)(1) areas where surface coal mining operations affects the Federal interest.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSM will make the VER determinations. OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOR will determine whether any proposed operation will adversely affect any publicly owned park and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Sites, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. DOR will make the VER determination for such lands using the State Program. DOR will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operations.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations will be permitted unless jointly approved by DOR and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOR will process and make determinations of VER on Federal lands, using the State Program, for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOR will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Secretary or the Governor may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DOR and the Secretary will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the state or the Secretary may have under laws other than SMCRA or their regulations including but not limited to those listed in Appendix A.

Bruce Babbitt,
Secretary of the Interior.

Date

Frank O'Bannon,
Governor of Indiana.

Date

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.

6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical

and Archaeological Data Act of 1974, 16 U.S.C. *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Constitution of the United States.

17. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

18. 30 CFR Chapter VII.

19. The Constitution of the State of Indiana.

20. Indiana Surface Coal Mining and Reclamation Act (P.L. 1—1995, SEC. 27) at Ind. Code 14—34 *et seq.*

21. Indiana Department of Natural Resources, Coal Mining and Reclamation Operations, Rules and Regulations, 310 Ind. Admin. Code 12.

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