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 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 agilmore@mcrgw.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.


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@mcrgw.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 avoid 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 of 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 for a State-Federal cooperative agreement. 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 OSM as the primary inspection agency for conducting necessary inspections for surface coal mining and reclamation operations on Federal lands in Indiana. OSM approved State Program (Indiana Code 14-34), and the rules and regulations set forth as a result of those acts. 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 OSM will conduct inspections of the operations on Federal lands and will prepare and file inspection reports documenting the inspection according to the State program. OSM 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 OSM's responsibility for issuing enforcement actions resulting from violations on surface coal mining and related activities on Federal lands. OSM 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 unsuitable petitions portion of the article only allows the Governor 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.

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 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 costs 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 applicant and 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)(4), 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 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 request the consent of the State, as 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 notify 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 any 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 exercise his 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 conformance 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 concurcences 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, MLA, NEPA, or other Federal laws.

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Section 1.4, 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 herein. 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)(3)(iii)(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 its responsibilities under SMCRA.

Article VIII: Enforcement

Section 1.4, 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 responsibilities 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 witnesses 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 Governor or the Secretary under the procedures of the Program, State rules and regulations, and any other requirements imposed by the State 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 Unsuitable 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 lands as 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.

2. 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 holdings in accordance with the boundaries of section 522(e)(1) areas where surface coal mining operations affects the Federal interest.

3. 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.

4. 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.

5. 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.

6. 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.
7. The Clean Air Act, 42 U.S.C. 7401 et seq., and implementing regulations.
18. 30 CFR Chapter VII.
20. Indiana Surface Coal Mining and Reclamation Act (P.L. 1—1995, SEC. 27) at Ind. Code 14–34 et seq.