

Dated: December 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN-153-FOR; Administrative Cause No. 02-034R]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Indiana Department of Natural Resources (IDNR or Indiana) proposed revisions to and additions of rules concerning protection of ground water quality. Indiana revised its program to provide additional safeguards for ground water.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226-6700. Internet address: IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program
- II. Submission of the Amendment
- III. OSM's Findings
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- V. OSM's Decision
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I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana

program effective July 29, 1982. 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). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated September 3, 2003 (Administrative Record No. IND-1719), IDNR sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). IDNR proposed to amend its program by adding new definitions, application requirements, and performance standards concerning the protection of ground water quality. IDNR is amending the Indiana program because the Indiana Groundwater Protection Act of 1989 (Indiana Code (IC) 13-18-17) requires any State agency with jurisdiction over an activity that may affect the quality of Indiana's ground water to adopt rules to apply the groundwater quality standards established by the Indiana Water Pollution Control Board (WPCB). In accordance with IC 13-18-17, WPCB adopted ground water quality standards at 327 Indiana Administrative Code (IAC) 2-11. WPCB's rule at 327 IAC 2-11-2 specifically requires IDNR to adopt rules to apply the standards established in 327 IAC 2-11 to the facilities, practices, and activities it regulates.

We announced receipt of the proposed amendment in the October 15, 2003, **Federal Register** (68 FR 59352). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 14, 2003. We received comments from one industry group, one citizens group, and one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Definitions

Indiana added the definitions discussed below from WPCB's definitions at 327 IAC 2-11-3(5), (8) and (11). Indiana added these definitions to help in implementing its

new performance standards concerning the protection of ground water quality at 312 IAC 25-6-12.5 and 25-6-76.5.

1. At 312 IAC 25-1-45.5, Indiana is adding the following definition for "drinking water well."

"Drinking water well," for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:

- (1) Supplies ground water for human consumption.
- (2) Has a depth greater than its largest surface dimension.
- (3) Is not permanently abandoned under 312 IAC 13-10-2.

Although there is no direct Federal counterpart definition for a drinking water well, Indiana's proposed definition is not inconsistent with the Federal definition of "drinking, domestic, or residential water supply" at 30 CFR 701.5. The Federal definition means, in part, water received from a well for direct human consumption or household use. Therefore, we are approving Indiana's definition at 312 IAC 25-1-45.5.

2. At 312 IAC 25-1-60.5, Indiana is adding the following definition for "Ground water management zone."

"Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25-6-12.5(a) or 312 IAC 25-6-76.5(a) are met at and beyond the boundary of the region.

There is no Federal counterpart definition for the term "ground water management zone." However, Indiana's proposed definition is not inconsistent with sections 515(b)(10) and 516(b)(9) of SMCRA or the Federal requirements at 30 CFR 816.41 and 817.41 concerning protection of the hydrologic balance, including ground water quality protection. Therefore, we are approving Indiana's definition at 312 IAC 25-1-60.5.

3. At 312 IAC 25-1-109.5, Indiana is adding the following definition for "Property boundary."

"Property boundary," for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous.

There is no Federal counterpart definition for the term "property boundary." However, Indiana's proposed definition is not inconsistent with the Federal definition of "permit area" at 30 CFR 701.5 or the Federal requirements concerning permit

boundaries at 30 CFR 779.24 and 783.24. Therefore, we are approving Indiana's definition at 312 IAC 25-1-109.5.

B. Surface Mining Permit Applications

1. At 312 IAC 25-4-43, Indiana is adding subdivision (4). This new subdivision requires the maps and plans of the proposed permit and adjacent areas to include all monitoring locations used to demonstrate compliance with 312 IAC 25-6-12.5.

There is no direct Federal counterpart to subdivision (4). However, the proposed provision is not inconsistent with the requirements of the Federal regulations at 30 CFR 780.21(i) concerning ground water monitoring plans. The Federal regulation at 30 CFR 780.21(i)(1) requires the ground water monitoring plan to include identification of site locations for ground water monitoring. Therefore, we are approving 312 IAC 25-4-43(4).

2. At 312 IAC 25-4-47(b), protection of hydrologic balance, Indiana is adding subdivision (9). This new subdivision requires the reclamation plan to contain a description, with appropriate maps and cross section drawings, of a plan to demonstrate compliance with 312 IAC 25-6-12.5.

Although there is no direct Federal counterpart to subdivision (9), the proposed provision is not inconsistent with the requirements of the Federal regulation at 30 CFR 780.21(h) concerning hydrologic reclamation plans. The Federal regulation at 30 CFR 780.21(h) requires the hydrologic reclamation plan to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Therefore, we are approving 312 IAC 25-4-47(b)(9).

C. Underground Mining Permit Applications

1. At 312 IAC 25-4-85(b), protection of hydrologic balance, Indiana is adding subdivision (8). This new subdivision requires the reclamation plan to contain a description, with appropriate maps and cross section drawings, of a plan to demonstrate compliance with 312 IAC 25-6-76.5.

Although there is no direct Federal counterpart to subdivision (8), the proposed provision is not inconsistent with the requirements of the Federal regulation at 30 CFR 784.14(g) concerning hydrologic reclamation plans. The Federal regulation at 30 CFR 784.14(g) requires hydrologic reclamation plans to contain steps to be taken to meet applicable Federal and State water quality laws and regulations.

Therefore, we are approving 312 IAC 25-4-85(b)(8).

2. At 312 IAC 25-4-93, Indiana is adding subdivision (4). This new subdivision requires the maps and plans of the proposed permit and adjacent areas to include all monitoring locations used to demonstrate compliance with 312 IAC 25-6-76.5.

Although there is no direct Federal counterpart to subdivision (4), the proposed provision is not inconsistent with the requirements of the Federal regulation at 30 CFR 784.14(h) concerning ground water monitoring plans. The Federal regulation at 30 CFR 784.14(h)(1) requires the ground water monitoring plan to include identification of site locations for ground water monitoring. Therefore, we are approving 312 IAC 25-4-93(4).

D. Surface Mining—Hydrologic Balance; Ground Water Quality Standards

Indiana is adding a new rule at 312 IAC 25-6-12.5 to read as follows:

312 IAC 25-6-12.5 Hydrologic balance; application of ground water quality standards at surface coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, including augering, coal processing, coal processing waste disposal, or spoil deposition, occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6.

(a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Surface coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Surface coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-33 and 312 IAC 25-6-25 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal extraction area.

(B) A coal mine processing waste disposal site if not within a coal extraction area.

(C) An area where coal is extracted by auger mining methods.

(D) A location at which coal is crushed, washed, screened, stored, and loaded at or

near the mine site unless the location is within the coal extraction area.

(E) A spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

There is no direct Federal counterpart to the proposed regulation at 312 IAC 25-6-12.5. However, we find that the requirements of 312 IAC 25-6-12.5 are not inconsistent with Section 515(b)(10) of SMCRA or the Federal regulations at 30 CFR 780.21(h) and 816.41(a), concerning protection of the hydrologic balance. The Federal regulation at 30 CFR 780.21(h), concerning hydrologic reclamation plans, requires plans to contain steps to be taken to meet

applicable Federal and State water quality laws and regulations. Section 515(b)(10) of SMCRA and the Federal regulation at 30 CFR 816.41(a) allow the regulatory authority to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Therefore, we are approving 312 IAC 25–6–12.5.

E. Underground Mining—Hydrologic Balance; Ground Water Quality Standards

Indiana is adding a new rule at 312 IAC 25–6–76.5 to read as follows:

312 IAC 25–6–76.5 Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14–34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13–19–3–3 has occurred and the area is not fully released from the performance bond required by IC 14–34–6.

(a) Ground water is classified under 327 IAC 2–11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2–11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25–4–74 and 312 IAC 25–6–88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2–11–9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well

be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

There is no direct Federal counterpart to the proposed regulation at 312 IAC 25–6–76.5. However, we find that the requirements of 312 IAC 25–6–76.5 are not inconsistent with Section 516(b)(9) of SMCRA or the Federal regulations at 30 CFR 784.14(g) and 817.41(a), concerning protection of the hydrologic balance. The Federal regulation at 30 CFR 784.14(g), concerning hydrologic reclamation plans, requires plans to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Section 516(b)(9) of SMCRA and the Federal regulation at 30 CFR 817.41(a) allow the regulatory authority to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Therefore, we are approving 312 IAC 25–6–76.5.

IV. Summary and Disposition of Comments

Public Comments

On October 15, 2003, we asked for public comments on the amendment (68 FR 59352), and received comments from one industry group and one citizens group.

Industry Group. We received comments from the Indiana Coal Council, Inc. (ICC) on October 31, 2003 (Administrative Record No. IND–1723). ICC commented that the proposed amendment is not inconsistent with any provision of SMCRA or of OSM's permanent program regulations, and should be approved. ICC also commented that the proposed amendment would not repeal or revise the requirement of Indiana's counterpart to 30 CFR 816.41(a) that surface mining and reclamation activities be conducted to prevent material damage to the hydrologic balance outside the permit area. ICC provided support for these comments.

We agree with ICC's comments. As shown above in section III, OSM's Findings, we found that the provisions of Indiana's proposed amendment are not inconsistent with SMCRA or the Federal regulations concerning protection of the hydrologic balance.

Citizens Group. We received comments from the Hoosier Environmental Council (HEC) on November 14, 2003 (Administrative Record No. IND–1724).

HEC Comment 1

The rules make no mention of wells used for purposes other than human consumption. The Indiana Ground Water Quality Standards state 'No person shall cause the ground water in a non-drinking water supply well, including an industrial, commercial, or agricultural supply well, to have a contaminant concentration that, based on best scientific information, renders the well unusable for its current use.' 327 IAC 2–11–2 Sec. 2(f) Despite this requirement, a definition is only provided for drinking water wells, and no mention is made in the rules about protection of non-drinking water supply wells.

A definition for non-drinking water supply wells should be included in these rules. Language should be inserted requiring the protection of the use of these wells. While not used for human consumption, these wells are an important resource to their owners including farmers who often rely on ground water for irrigation and livestock. Farmers would be especially hard hit by the cost of replacing these wells with municipal water or other water supplies.

Response to Comment 1. We disagree with the commenter. Indiana's proposed rules do require protection for nondrinking water supply wells.

Specifically, Indiana's proposed rules at 312 IAC 25-6-12.5(c) for surface mining and 25-6-76.5(c) for underground mining provide that coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well. The operations must prevent impacts to the ground water that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. These rules also provide remedies if a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from mining activities. Indiana's rules at 312 IAC 25-4-33 and 312 IAC 25-6-25 govern water replacement for surface mining activities and 312 IAC 25-4-74 and 312 IAC 25-6-88 govern water replacement for underground mining activities. Although Indiana did not add a definition for non-drinking water supply wells, neither did the Water Pollution Control Board in its rules at 327 IAC 2-11.

HEC Comment 2

The rule sets no provisions for minimizing ground water contamination within the mine itself. Indiana's Surface Mining Control and Reclamation Act (I-SMCRA), Ind. Code § 14-34 *et seq.*, requires mine operators to 'Minimize disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas and to the quality and quantity of water in surface and ground water system during and after surface coal mining and reclamation operations.' (IC 14-34-10-2(13)) Under the proposed rule, no standards will apply within the ground water management zone. Under the IDEM [Indiana Department of Environmental Management] ground water standards, the standard for these areas becomes the amount of pollution caused by mining upon bond release. Thus these rules do not enforce the requirement to minimize the pollution of mine waters within mined properties.

Response to Comment 2. Indiana's proposed rules are in addition to Indiana's existing rules for the protection of the hydrologic balance at 312 IAC 25-6, which apply to the entire permit area and adjacent areas. The proposed rules do not replace or restrict the requirements of IC 14-34-10-2(13) or of Indiana's implementing rules at 312 IAC 25-6-12 and 25-6-21 through 25-6-23.

HEC Comment 3

The provisions of federal and state mining law in concerns to ground water contamination will be enforced by the standards set by this proposed rule. Under its

current language, it does not comply with the requirements of SMCRA and I-SMCRA of minimizing pollution within the mine boundaries and preventing pollution outside of the permit boundary.

Response to Comment 3. We disagree with the commenter. As discussed in our response to Comment 2 above, the proposed rules do not replace or restrict Indiana's existing rules concerning protection of the hydrologic balance, including ground water. Although Indiana's proposed rules at 312 IAC 25-6-12.5 and 25-6-76.5 will specifically enforce the ground water quality standards under 327 IAC 2-11, Indiana's existing rules enforce the hydrologic balance standards, including ground water, required by SMCRA and I-SMCRA.

Federal Agency Comments

On September 9, 2003, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND-1720). The U.S. Fish and Wildlife Service responded on October 8, 2003 (Administrative Record No. IND-1721), that it had no specific comments on the program amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to these air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On September 9, 2003, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND-1720). EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 9, 2003, we requested comments on Indiana's amendment (Administrative Record No. IND-1720), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Indiana sent us on September 3, 2003.

We approve the rules proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State that do not have Federal counterparts have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of

Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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 determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

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; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (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. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 4, 2003.

Charles E. Sandberg,
Acting Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

■ 1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 914.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|-----------------------------------------------------------------------------------------|
| * * * * * | * * * * * | * * * * * |
| September 3, 2003 | December 31, 2003 | 312 IAC 25–1–45.5, 60.5, 109.5; 25–4–43(4), 47(b)(9), 85(b)(8), 93(4); 25–6–12.5, 76.5. |

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-245-FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; removal of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the removal of a required amendment to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director; Telephone: (859) 260-8400; E-mail: bkovacic@osmre.gov.

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I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register**

(47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Purpose of the Rule

The required amendment at 30 CFR 917.16(k) reads as follows:

By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations (KAR) to require that the assessment Conference Officer's Report mentioned in 405 KAR 7:092 Section 4(5) be served in a manner consistent with 405 KAR 7:091 Section 5, and to specify that the time allowed under 405 KAR 7:092 Section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the Conference Officer's Report does not begin to run until service is obtained in this manner.

On March 28, 2003, OSM forwarded a letter to Kentucky requesting that the required amendment at 30 CFR 917.16(k) be addressed by forwarding to OSM a policy statement that established its procedures on mailing of Conference Officer's Reports and the date that begins the administrative petition process. In response to this request we received a letter from the Kentucky Natural Resources and Environmental Protection Cabinet, Office of Administrative Hearings, dated April 3, 2003, requesting that its policy of requiring all Conference Officer's Reports be sent by certified mail be considered by us as fulfilling the requirements of the above-mentioned amendment (Administrative Record No. KY-1576). Included in the letter was a copy of a memorandum, dated April 2, 2002, sent from the Chief Hearing Officer to the Penalty Assessments Coordinator and the Assessment Conference Officer. This memorandum reminded its recipients that, according to policy, all Conference Officer's Reports should be mailed via certified mail, return receipt requested, and that, in calculating the time for the filing of an administrative petition, the beginning date should be the date of service of the Conference Officer's Report, rather than the mailing date. The memorandum acknowledged that Kentucky's regulation, which allows service by regular mail, had been found by OSM to be less effective than a corresponding Federal regulation (Administrative Record No. KY-1605).

Based on the commitments included in the above-referenced letter and accompanying memorandum, we announced our proposal to remove this required amendment on October 3, 2003, in the **Federal Register** (68 FR

57398). In the same notice we opened the public comment period and provided an opportunity for a public hearing or meeting on whether the policy letter discussed above meets the requirements of the required amendment, thereby eliminating the need for a revision to the Kentucky regulatory program. We did not hold a public hearing or meeting because no one requested one. The public comment period closed on November 3, 2003. We received comments from two Federal agencies (U.S. Department of the Interior, Fish and Wildlife Service and the U.S. Army Corps of Engineers). We also received comments from the Kentucky Resources Council, Inc.

III. OSM's Findings

In our August 6, 1993, decision we determined that the required amendment was necessary because we were concerned that 405 KAR 7:092 section 4(5) was less effective than its Federal counterpart found at 30 CFR 845.18 because of the way in which Conference Officer's Reports were administratively handled (58 FR 42001, 42006). Although Kentucky has not amended its regulations in response to this required amendment, Kentucky's policy has been to serve all Conference Officer's Reports by certified mail and to begin the period for filing an administrative petition from the date of service of the report (Administrative Record No. KY-1605). Our analysis of this policy indicates that it clarifies the language of the Kentucky regulation, which requires service by "mail", without specifying whether the service must be made by "certified" or "regular" mail. 405 KAR 7:092, section 4(5). In addition, Kentucky's policy of starting the appeal period from the date of service indicates that the State interprets its regulation at 405 KAR 7:092, section 6(1)(b), which begins the appeal period on the mailing date, in a manner consistent with its policy, and with the Federal regulations. In other words, it is apparent that Kentucky interprets the term "mailing" to include service, *i.e.*, receipt, of the Conference Officer's Report. Furthermore, the record is devoid of any indication that Kentucky has failed to follow this policy in the last decade. With these policy clarifications now in place, these aspects of the Kentucky program clearly meet the requirements of, and are therefore consistent with, the Federal regulations at 30 CFR 845.17 and 845.18.

We do recognize that this determination is being made based on program implementation based on a State policy, rather than via a statutory