

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

[Docket No. IN-155-FOR]

Indiana Regulatory Program and Abandoned Mine Land Reclamation Plan**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) and Abandoned Mine Land Reclamation Plan (Indiana plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposes revisions to and additions of statutes about release of performance bonds, requirements for the Indiana bond pool, and government financed construction. Indiana intends to revise its program to be consistent with SMCRA and to improve operational efficiency.

This document gives the times and locations that the Indiana program and plan, and proposed amendment to that program and plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t., August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on August 3, 2004.

ADDRESSES: You may submit comments, identified by Docket No. IN-155-FOR, by any of the following methods:

- E-mail: IFOMAIL@osmre.gov.

Include Docket No. IN-155-FOR in the subject line of the message.

- *Mail/Hand Delivery:* Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.

- *Fax:* (317) 226-6182.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Indiana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office. Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226-6700, E-mail: IFOMAIL@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location: Indiana Department of Natural Resources, Division of Reclamation, R. R. 2, Box 129, Jasonville, Indiana 47438-9517, Telephone: (812) 665-2207.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program and Indiana Plan
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Indiana Program and Indiana Plan

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 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 of the Indiana program 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.

The Abandoned Mine Land Reclamation program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Indiana plan effective July 29, 1982. You can find background information on the Indiana plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the July 26, 1982, **Federal Register** (47 FR 32108). You can find later actions concerning the Indiana plan and amendments to the plan at 30 CFR 914.25.

II. Description of the Proposed Amendment

By letter dated June 2, 2004 (Administrative Record No. IND-1728), the Indiana Department of Natural Resources (IDNR) sent us House Enrolled Act 1203 (HEA 1203) as an amendment to its program and plan under SMCRA (30 U.S.C. 1201 *et seq.*). HEA 1203 contains numerous amendments to the State statutes, but only those that pertain to the Indiana program or plan are discussed below. The IDNR sent the amendment to us at its own initiative. Section 1 of HEA 1203 amends Indiana Code (IC) 14-8-2-117.3, concerning the definition of "Governmental entity." Sections 26 and 27 of HEA 1203 amend IC 14-34-6-7 and IC 14-34-6-10, respectively, concerning performance bond release. Sections 28, 29, and 30 of HEA 1203 amend IC 14-34-8-4, IC 14-34-8-6, and IC 14-34-8-11, respectively, concerning the Indiana bond pool. Section 31 of HEA 1203 adds IC 14-34-19-15, concerning procedures for abandoned mine land reclamation

projects receiving less than 50 percent government funding. Finally, Section 32 of HEA 1203 adds a definition for "government financed construction." Below is a summary of the changes proposed by Indiana. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. Indiana Program

1. IC 14-8-2-117.3 Definition of "Governmental Entity"

Section 1 of HEA 1203 amended the definition of "Governmental entity" at IC 14-8-2-117.3 by adding a reference to IC 14-34-19-15, which concerns procedures for abandoned mine land reclamation projects receiving less than 50 percent government funding. The revised definition reads as follows:

"Governmental entity" for the purposes of IC 14-22-10-2, IC 14-22-10-2.5, and IC 14-34-19-15 has the meaning set forth in IC 14-22-10-2(a).

2. IC 14-34-6-7 and IC 14-34-6-10 Performance Bond Release

a. Section 26 of HEA 1203 amended IC 14-34-6-7 to authorize the director of the Department of Natural Resources to initiate an application for the release of a performance bond. It designated the existing text as subsection (a) and added new subsection (b) to read as follows:

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section and section 8 of this chapter.

b. Section 27 of HEA 1203 amended IC 14-34-6-10(b)(2) by removing the word "permittee's." The revised subdivision reads as follows:

(2) Request a public hearing within thirty (30) days after the last publication of the notice required by section 7 of this chapter.

3. IC 14-34-8-4, IC 14-34-8-6, and IC 14-34-8-11 Bond Pool

a. Section 28 of HEA 1203 amended IC 14-34-8-4(g) and (h) by adding the phrase "unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1" to the end of each paragraph. With the addition of the phrase, a mine operator may withdraw from the bond pool by replacing bond pool liability with bonds acceptable under the surface coal mining and reclamation bonding law. The revised paragraphs read as follows:

(g) Commencement of participation in the bond pool for the applicable permit constitutes an irrevocable commitment to participate in the bond pool for the duration of the

surface coal mining operations covered under the permit, unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.

(h) An operator may apply for participation in the bond pool on a bond increment area under an existing permit. Commencement of participation in the bond pool for the bond increment area, within an existing permit, constitutes an irrevocable commitment to participate in the bond pool for the duration of that surface coal mining permit, unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.

b. Section 29 of HEA 1203 amended IC 14-34-8-6 to authorize the director of the Department of Natural Resources to require operators to withdraw from the surface coal mine reclamation bond pool under certain circumstances. It amended IC 14-34-8-6(a) by changing a reference from "subsection (b)" to "subsection (c)." It redesignated subsections (b) and (c) as IC 14-34-8-6(c) and (d) and added a new subsection (b) to read as follows:

(b) If the final release of a bond has not been obtained within ten (10) years after the date of the last required report of the affected area for the permit, including new disturbances, the director may require the operator to:

(1) Replace the bond pool liability with bonds acceptable under IC 14-34-6-1; and
(2) Withdraw that operation from the bond pool.

If the operator fails to comply with the director's order to withdraw a mine area from the bond pool, the director may suspend the operator from the bond pool.

c. At IC 14-34-8-11, Section 30 of HEA 1203 amended membership and appointment authority of the surface coal mine reclamation bond pool committee by revising subsections (a), (b), (e), and (f) to read as follows:

(a) The surface coal mine reclamation bond pool committee is established. The committee consists of the following:

(1) Five (5) members appointed by the director as follows:

(A) Three (3) members must represent a cross-section of coal operators.

(B) One (1) member must be a member of the commission.

(C) One (1) member must be a representative of the public with knowledge of reclamation performance guarantees.

(2) The director or the director's designee, who is a nonvoting member.

(b) The term of each member is four (4) years beginning July 1. The director may remove an appointed member for cause.

(c) * * *

(d) * * *

(e) The committee shall, acting in an advisory capacity to the director, do the following:

(1) Meet as necessary to perform duties under this chapter, but not less than one (1) time each year, for the purpose of formulating recommendations to the director concerning oversight of the general operation of the bond pool.

(2) Review and make recommendations concerning the following:

(A) All proposed expenses from the bond pool.

(B) All applications for admission to the bond pool.

(f) The director shall report annually to the committee and to the governor on the status of the bond pool.

4. IC 2004-71-32 Definition of "Government Financed Construction"

At IC 2004-71-32, Section 32 of HEA 1203 added a definition for "government financed construction" and its associated requirements to read as follows:

(a) Notwithstanding 312 IAC [Indiana Administrative Code] 25-1-57, "government financed construction" means construction that is:

(1) At least fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds; or

(2) Less than fifty percent (50%) funded by funds appropriated from a government financing agency's budget or obtained from general revenue bonds if construction is undertaken as an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328) and IC 14-34-19.

However, construction through government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments do not qualify as government financed construction.

(b) Before July 1, 2006, the department of natural resources shall amend 312 IAC 25-1-57 to correspond with this Section.

(c) This Section expires July 1, 2007.

B. Indiana Plan

IC 14-34-19-15 Procedures for Abandoned Mine Land Reclamation Projects Receiving Less Than 50 Percent Government Funding

Section 31 of HEA 1203 added IC 14-34-19-15 to require specific findings and documentation for certain mine land reclamation projects funded by a governmental entity. The new statute reads as follows:

(a) This section applies to the following:

(1) When the department is considering a mine land reclamation project under IC 14-34-1-2 or 312 IAC 25-2-3 that is:

(A) at least fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds; or

(B) less than fifty percent (50%) funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds if the construction is an approved

reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and this chapter.

Government financing guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments are not considered funds appropriated by a governmental entity under this subdivision.

(2) When the level of funding for the construction will be less than fifty percent (50%) of the total cost because of planned coal extraction.

(b) The department must make the following determinations:

(1) The likelihood that coal will be mined under a surface coal mining and reclamation operations permit issued under this article. The determination must consider available information, including the following:

(A) Coal reserves from existing mine maps or other sources.

(B) Existing environmental conditions.

(C) All prior mining activity on or adjacent to the site.

(D) Current and historical coal production in the area.

(E) Any known or anticipated interest in mining the site.

(2) The likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) The likelihood that reclamation activities at the site might adversely affect nearby mining activities.

(c) If a decision is made to proceed with the reclamation project, the department must make the following determinations:

(1) The limits on any coal refuse, coal waste, or other coal deposits that can be extracted under the exemption under IC 14-34-1-2 and 312 IAC 25-2-3.

(2) The delineation of the boundaries of the abandoned mine lands reclamation project.

(d) The following documentation must be included in the abandoned mine lands reclamation case file:

(1) Determinations made under subsections (b) and (c).

(2) The information taken into account in making the determinations.

(3) The names of the persons making the determinations.

(e) The department must do the following for each project:

(1) Characterize the site regarding mine drainage, active slide and slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance.

(2) Ensure that the reclamation project is conducted according to provisions of 30 CFR Subchapter R, this chapter, and applicable procurement provisions to ensure the timely progress and completion of the project.

(3) Develop specific site reclamation requirements, including, when appropriate, performance bonds that comply with procurement procedures.

(4) Require the contractor conducting the reclamation to provide, before reclamation begins, applicable documents that authorize the extraction of coal and any payment of royalties.

(f) The contractor must obtain a surface coal mining and reclamation operations

permit under this article for any coal extracted beyond the limits of the incidental coal specified in subsection (c)(1).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h) and 30 CFR 884.15(a), we are seeking your comments on whether the amendment satisfies the applicable program and plan approval criteria of 30 CFR 732.15 and 30 CFR 884.14, respectively. If we approve the amendment, it will become part of the Indiana program or plan, as noted in Section II of this document.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. 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 an address other than the Indianapolis Field Office may not be logged in.

Electronic Comments

Please submit electronic comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: Docket No. IN-155-FOR" and your name and return address in your electronic message. If you do not receive a confirmation that we have received your electronic message, contact the Indianapolis Field Office at (317) 226-6700.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review 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 p.m., e.s.t., on August 3, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also 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 or State and Tribal abandoned mine land reclamation plans and plan amendments because each program and plan 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. Under section 405 of SMCRA (30 U.S.C. 1235) and the Federal regulations at 30 CFR 884.14 and 884.15, decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments submitted by the States or Tribes must be based solely on a determination of whether the submittal meets the requirements to Title IV of SMCRA (30 U.S.C. 1231–1243) and its implementing Federal regulations and whether the other requirements of 30 CFR part 884 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 and abandoned mine land reclamation programs. 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. Section 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures,

guidelines, and requirements established under 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 and the Indiana plan does not regulate coal mined lands eligible for reclamation under Title IV of SMCRA on Indian lands. Therefore, the Indiana program and plan have 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)). Also, agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 a portion of the provisions in 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.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also 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 administrative and procedural in nature and 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 a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and 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 a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and 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: June 17, 2004.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04-16284 Filed 7-16-04; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[Docket No. IN-141-FOR]

Indiana Regulatory Program

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

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

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposes revisions to and additions of rules about definitions, identification of interests, topsoil, siltation structures, impoundments, refuse piles, prime farmland, lands eligible for re-mining, permitting, performance bond release, surface and ground water monitoring, roads, inspection, and civil penalties. Indiana intends to revise its program to be consistent with the corresponding

Federal regulations, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Indiana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t., August 18, 2004. If requested, we will hold a public hearing on the amendment on August 13, 2004. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on August 3, 2004.

ADDRESSES: You may submit comments, identified by Docket No. IN-141-FOR, by any of the following methods:

- *E-mail:* IFOMAIL@osmre.gov.
- Include Docket No. IN-141-FOR in the subject line of the message.
- *Mail/Hand Delivery:* Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.
- *Fax:* (317) 226-6182
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Indiana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226-6700, E-mail: IFOMAIL@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438-9517, Telephone: (812) 665-2207.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

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

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 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 of the Indiana program 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. Description of the Proposed Amendment

By letter dated May 19, 2004 (Administrative Record No. IND-1726), Indiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment in response to a June 17, 1997, letter (Administrative Record No. IND-1575) that we sent to Indiana in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 914.16(f), (s), and (hh) through (mm). The amendment also includes changes made at Indiana's own initiative. Below is a summary of the changes proposed by Indiana. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.