

### 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.*

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## 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**.

*A. 312 IAC (Indiana Administrative Code) 25-1 Definitions*

Indiana revised its definition of "affected area" and added definitions for "lands eligible for reining" and "unanticipated event or condition" as discussed below.

1. At 312 IAC 25-1-8, Indiana revised its definition of "affected area" to read as follows:

(a) "Affected area" means any land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The term includes any of the following:

- (1) The disturbed area.
- (2) Any area upon which surface coal mining and reclamation operations are conducted.
- (3) Any adjacent land the use of which is incidental to surface coal mining and reclamation operations.
- (4) Any area covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this section.
- (5) Any area covered by:
  - (A) Surface excavations;
  - (B) Workings;
  - (C) Impoundments;
  - (D) Dams;
  - (E) Ventilation shafts;
  - (F) Entryways;
  - (G) Refuse banks;
  - (H) Dumps;
  - (I) Stockpiles;
  - (J) Overburden piles;
  - (K) Spoil banks;
  - (L) Culm banks;
  - (M) Tailings;
  - (N) Holes or depressions;
  - (O) Repair areas;
  - (P) Storage areas; or
  - (Q) Shipping areas.
- (6) Any area upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations.

(7) The area located above underground workings.

(b) The term includes every road used for purposes of access to, or for hauling coal to or from, any surface coal mining and reclamation operation unless:

(1) the road is designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) the road is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction;

(3) there is substantial (more than incidental) public use; and

(4) the extent and the effect of mining-related uses of the road by the permittee do not warrant regulation as part of the surface coal mining and reclamation operations.

(c) The director shall determine, on a case-by-case basis, whether a particular road satisfies the requirements of subsection (b)(4) based upon the mining-related use of the road and consistent with the definition of

surface coal mining operation found in section 145 of this rule.

2. At 312 IAC 25-1-75.5, Indiana added a definition for "lands eligible for reining" to read as follows:

"Lands eligible for reining" means, for the purposes of 312 IAC 25-4-105.5, 312 IAC 25-4-114, 312 IAC 25-4-115, and 312 IAC 25-5-7, those lands eligible for funding under IC [Indiana Code] 14-34-19 or 30 U.S.C. 1232(g)(4).

3. At 312 IAC 25-1-155.5, Indiana added a definition for "unanticipated event or condition" to read as follows:

"Unanticipated event or condition" means, for the purposes of 312 IAC 25-4-114, an event or condition that is encountered in a reining operation and was not contemplated by the applicable surface mining and reclamation permit.

*B. 312 IAC 25-4-17 Surface Mining Permit Applications; Identification of Interests*

Indiana added the language "shall be submitted with the application" at the end of subsections (d), (e), and (f).

*C. 312 IAC 25-4-45 Surface Mining Permit Applications; Reclamation and Operations Plan; Reclamation Plan; General Requirements*

Indiana revised subdivision (b)(4) to require a demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-11(c) to include an analysis of the total depth of the soil.

*D. 312 IAC 25-4-49 Surface Mining Permit Applications; Reclamation and Operations Plan; Reclamation Plan for Siltation Structures, Impoundments, Dams, and Embankments, and Refuse Piles*

1. Indiana revised the first sentence of subsection (a) to read as follows:

(a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area.

2. Indiana revised subsection (c) by requiring permanent and temporary impoundments to be designed to comply with both the requirements of 312 IAC 25-6-20 and the requirements of the Mine Safety and Health Administration at 30 CFR 77.216-1 and 30 CFR 77.216-2.

3. Indiana added a new subsection (d) to require refuse piles to be designed to comply with 312 IAC 25-6-36 through 312 IAC 25-6-39. Indiana redesignated existing subsection (d) as subsection (e).

4. Indiana added new subsection (f) to read as follows:

(f) If the structure meets the Class B or C criteria for dams in TR-60 [Technical Release 60] or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

- (A) Strength parameters.
- (B) Pore pressures.
- (C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

5. Indiana redesignated existing subsection (e) as subsection (g) and added introductory language to read as follows: "If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the: \* \* \*" Indiana also removed the word "the" from the beginning of subdivisions (g)(1) through (3) and removed the last sentence from subdivision (g)(3).

*E. 312 IAC 25-4-87 Underground Mining Permit Applications; Reclamation Plan for Siltation Structures, Impoundments, Dams, and Embankments, and Refuse Piles*

1. Indiana revised the first sentence of subsection (a) to read as follows:

(a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area.

2. Indiana revised subsection (c) by requiring permanent and temporary impoundments to be designed to comply with the requirements of 312 IAC 25-6-84, 30 CFR 77.216-1, and 30 CFR 77.216-2.

3. Indiana added a new subsection (d) to require refuse piles to be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102. Indiana redesignated existing subsection (d) as subsection (e).

4. Indiana added new subsection (f) to read as follows:

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

- (A) Strength parameters.
- (B) Pore pressures.
- (C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

5. Indiana redesignated existing subsection (e) as subsection (g) and

added introductory language to read as follows: "If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the: \* \* \*" Indiana also removed the word "the" from the beginning of subdivisions (g)(1) through (3).

*F. 312 IAC 25-4-102 Special Categories of Mining; Prime Farmland*

1. In subdivision (d)(1), Indiana changed its references to the United States Soil Conservation Service to the United States Natural Resources Conservation Service (NRCS).

2. Indiana added the following new subsections (e) and (f):

(e) Before any permit is issued for areas that include prime farmland, the director shall consult with the state conservationist of the Natural Resources Conservation Service. The state conservationist shall do the following:

(1) Provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (d).

(2) Suggest revisions resulting in more complete and adequate reconstruction if the state conservationist considers the soil reconstruction methods to be inadequate. The state conservationist has fifteen (15) days after consultation with the director to respond.

(3) Provide to the director a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland descriptions.

(4) Assist the director in determining the adequacy of all soil surveys required in subsection (d)(1) through (d)(3).

(f) A permit for the mining and reclamation of prime farmland may be granted by the director if the director finds, in writing, upon the basis of a complete application, the following:

(1) The approved proposed postmining land use of prime farmland will be cropland.

(2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (d), after consideration of any revisions to that plan suggested by the state conservationist under subsection (e).

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(4) The proposed operations will be conducted in compliance with the requirements of 312 IAC 25-6-139 through 312 IAC 25-6-143 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Waterbodies, if any, to be constructed during mining and reclamation must be located within the postreclamation nonprime farmland portions

of the permit area. The creation of any waterbody must be approved by the director, and the consent of all affected property owners within the permit area shall be obtained.

*G. 312 IAC 25-4-105.5 Special Categories of Mining; Lands Eligible for Remining*

At 312 IAC 25-4-105.5, Indiana added the following permitting requirements for lands eligible for remining:

(a) This section contains permitting requirements to implement section 114(d) of this rule. Any person who submits a permit application to conduct surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this rule applicable to surface coal mining and reclamation operations. The application shall contain the following:

(1) To the extent not otherwise addressed in the permit application, an identification of potential environmental and safety problems related to prior mining activity at the site that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation that shall include the following:

(A) Visual observation at the site.

(B) A record review of past mining at the site.

(C) Environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in subdivision (1), a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004.

*H. 312 IAC 25-4-113 Review, Public Participation, and Approval or Disapproval of Permit Applications; Permit Terms and Conditions; Public Availability*

1. Indiana added new subsection (f) to require information on the nature and location of archaeological resources on public and Indian land, required under 16 U.S.C. 470aa through 16 U.S.C. 47mm, to be held confidential.

2. Indiana redesigned existing subsection (f) as subsection (g) and revised the first sentence to allow a person who opposes or seeks disclosure of confidential information to submit a request under section 25-4-110.

*I. 312 IAC 25-4-114 Review, Public Participation, and Approval or Disapproval of Permit Applications; Permit Terms and Conditions; Review of Permit Applications*

Indiana added new subsection (d) to read as follows:

(d) After October 24, 1992, the following apply:

(1) The prohibitions of subsection (b) regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after October 24, 1992;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(i) Issued before September 30, 2004, or any renewals thereof; and

(ii) Held by the person making application for the new permit.

(2) A permit issued under section 105.5 of this rule, an event or condition shall be presumed to be unanticipated for the purposes of this subsection if the event or condition:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

*J. 312 IAC 25-4-115 Review, Public Participation, and Approval or Disapproval of Permit Applications; Permit Terms and Conditions; Permit Approval or Denial*

Indiana added the following requirements for lands eligible for remining at new subdivision (a)(13):

(13) For permits to be issued under section 105.5 of this rule, the permit application must contain the following:

(A) Lands eligible for remining.

(B) An identification of any potential environmental and safety problems related to prior mining activity that could reasonably be anticipated to occur at the site.

(C) Mitigation plans to sufficiently address potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

*K. 312 IAC 25-4-118 Review, Public Participation, and Approval or Disapproval of Permit Applications; Permit Terms and Conditions; Permit Conditions*

Indiana revised subdivision (4) to require the permittee to allow the authorized representatives of the Secretary of the Interior to also have the right of entry to a mine site for the purpose of conducting inspections.

*L. 312 IAC 25-5-7 Period of Liability*

Indiana added the following new requirements for lands eligible for remining at the end of subsection (b):

On lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, the liability period is two (2) years. To the extent that success standards are established by 312 IAC 25-6-59(c)(1) or 312 IAC 25-6-120(c)(1), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

*M. 312 IAC 25-5-16 Performance Bond Release; Requirements*

1. Indiana added the following new subsection (b):

(b) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

2. Indiana redesignated existing subsections (b) through (h) as subsections (c) through (i).

*N. 312 IAC 25-6-17 Surface Mining; Hydrologic Balance; Siltation Structures and 312 IAC 25-6-81 Underground Mining; Hydrologic Balance; Siltation Structures*

Because the Underground Mining rule is structured the same as the Surface Mining rule, the revisions discussed below pertain to both 312 IAC 25-6-17 and 312 IAC 25-6-81.

1. Indiana revised subdivision (a)(3) by removing the language that allowed a qualified registered professional land surveyor for the surface mining rule or qualified professional land surveyor for the underground mining rule to certify a siltation structure.

2. Indiana changed the term "sedimentation pond" to "siltation structure" throughout subsection (d).

3. Indiana added the following requirement at new clause (d)(2)(B):

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

4. Indiana redesignated existing clause (d)(2)(B) as clause (C) and revised it to read as follows:

(C) For a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a), or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

5. Indiana revised clauses (d)(3)(A) and (B) to read as follows:

(A) In the case of a siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) In the case of a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C

criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

*O. 312 IAC 25-6-20 Surface Mining; Hydrologic Balance; Permanent and Temporary Impoundments and 312 IAC 25-6-84 Underground Mining; Hydrologic Balance; Permanent and Temporary Impoundments*

Because the Underground Mining rule is structured the same as the Surface Mining rule, the revisions discussed below pertain to both 312 IAC 25-6-20 and 312 IAC 25-6-84 with the following exception: Indiana proposed to delete the language "and located where failure would not be expected to cause loss of life or serious property damage" shown in 312 IAC 25-6-84(a)(3)(B) pertaining to underground mining. This language is retained in the surface mining rule at 312 IAC 25-6-20(a)(3)(B).

1. Indiana revised subdivision (a)(1) by requiring that an impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) comply with the requirements of 30 CFR 77.216 and 312 IAC 25-6.

2. Indiana revised clauses (a)(3)(A), (B) and (C) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

**Please Note:** As discussed earlier in this document, the language, "and located where failure would not be expected to cause loss of life or serious property damage," in clause (B) above is proposed for removal in 312 IAC 25-6-

84(a)(3)(B) pertaining to underground mining.

3. Indiana added the following new requirement to the end of subdivision (a)(4):

Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

4. Indiana revised the second sentence of subdivision (a)(5) by requiring foundation investigation, as well as any necessary laboratory testing of foundation material, to be performed to determine the design requirements for foundation failure for an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60).

5. Indiana added the following new requirement at clause (a)(7)(B)(ii) and redesigned existing clause (a)(7)(B)(ii) as (a)(7)(B)(iii) with revisions:

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(iii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

6. Indiana revised clause (a)(9)(B) by removing the language that allowed a qualified registered professional land surveyor to certify an impoundment.

7. Indiana revised clause (a)(9)(D) by requiring impoundments subject to 30 CFR 77.216 or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) to be examined in accordance with 30 CFR 77.216-3.

8. Indiana revised clause (a)(9)(E) by adding a reference to NRCS Class B or C criteria for dams, removing the language that allowed a qualified registered professional land surveyor to certify an impoundment, and correcting a regulation reference. The revised clause reads as follows:

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer and shall

include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this clause, following approval by the director:

9. Indiana made the following revisions to subdivisions (c)(1) and (2) regarding temporary impoundments:

(1) Meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(2) Not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

*P. 312 IAC 25-6-23 Surface Mining; Hydrologic Balance; Surface and Ground Water Monitoring*

Indiana added the following new clause (a)(4)(C):

(C) Minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit to include, but not be limited to:

(i) Accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(ii) Immediate implementation of measures necessary to mitigate the noncompliance; and

(iii) As soon as practicable issue warning to any person whose health and safety is in imminent danger due to the noncompliance.

*Q. 312 IAC 25-6-25 Hydrologic Balance; Water Rights and Replacement*

Indiana revised 312 IAC 25-6-25 by removing the language "pursuant to a lawful order of an agency or court under IC 14-25-4 or another state water rights law" from the first sentence. Indiana also removed the existing second sentence regarding water replacement rights and replaced it with the following requirement:

Baseline hydrologic information required in 312 IAC 25-4-28 and 312 IAC 25-4-30 through 312 IAC 25-4-32 shall be used to determine the extent of the impact of mining upon ground water and surface water and other relevant information.

*R. 312 IAC 25-6-66 Surface Mining; Primary Roads*

Indiana removed existing clauses (2)(A), (B), and (C) and added the substantive requirements of clauses (2)(A) and (C) to the text of subdivision (2). Existing clauses (2)(C)(i) through (viii) were redesigned as clauses (2)(A) through (H). The text of revised subdivision (2) reads as follows:

(2) Each primary road embankment shall have a minimum static safety factor of one and three-tenths (1.3) and be designed in compliance with the following design standards:

*S. 312 IAC 25-6-130 Underground Mining; Primary Roads*

Indiana revised subdivision (2) to read as follows:

(2) Each primary road embankment shall be shown to have a minimum static factor of one and three-tenths (1.3) or shall be designed in compliance with the following design standards:

(A) The embankment foundation area shall be cleared of all organic material and the entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at a right angle to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

(D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(E) The moisture content of the embankment shall be sufficient to secure proper compaction.

(F) The side slope of the embankment shall be no steeper than 2h:v1.

(G) Maximum fill height shall be twenty-five (25) feet as measured from the natural ground at the downstream toe to the top of the embankment.

(H) The embankment shall have a minimum top width of  $(h + 35)/5$ , where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment and shall be adequate for the intended use.

*T. 312 IAC 25-7-1 Inspections of Sites*

1. Indiana removed existing subdivision (a)(2) and redesignated existing subdivisions (a)(3) and (4) as subdivisions (a)(2) and (3).

2. Indiana redesignated the existing subsection (f) as subsection (h) and

added the following new subsections (f) and (g):

(f) In lieu of the inspection frequency established in subsection (a), the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one (1) complete inspection per calendar year. In selecting an alternate frequency authorized under this subsection, the regulatory authority shall do the following:

(1) First conduct a complete inspection of the abandoned site.

(2) Provide public notice and opportunity to comment under subsection (g).

(3) Prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. The written finding shall justify the new inspection frequency by affirmatively addressing in detail the following criteria:

(A) How the site meets each of the criteria under the definition of an abandoned site in subsection (h) to qualify for a reduction in inspection frequency.

(B) Whether, and to what extent, there exists on the site an impoundment, an earthen structure, or another condition that poses, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harm to land, air, or water resources.

(C) The extent to which an existing impoundment or earthen structure was constructed and certified in accordance with prudent engineering designs approved in the permit.

(D) The degree to which erosion and sediment control is present and functioning.

(E) The extent to which the site is located near or above an urbanized area, a community, an occupied dwelling, a school, and another public or commercial building or facility.

(F) The extent of reclamation completed prior to abandonment and the degree of stability of an unreclaimed area, taking into consideration any physical characteristic of the land mined and the extent of settlement or revegetation that has occurred naturally.

(G) Based on a review of the complete or partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(g) The public notice and opportunity to comment required under subsection (f)(2) shall be provided as follows:

(1) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30) day period in which to subject written comments.

(2) The public notice shall contain the following:

(A) Name of permittee.

(B) Permit number.

(C) Precise location of the land affected.

(D) Proposed inspection frequency.

(E) General reasons for reducing the inspection frequency.

(F) Bond status of the permit.

(G) Telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted.

(H) Closing date of the comment period.

#### *U. 312 IAC 25-7-20 Civil Penalties; Hearing Request*

Indiana revised 312 IAC 25-7-20 to increase the time from 15 to 30 days from receipt of the conference officer's action that a person charged with a violation may contest the proposed penalty or the fact of the violation.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

#### *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 Internet 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-141-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet 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*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

#### *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 SMCRRA (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 this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon 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 rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*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 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 was not considered a major rule.

*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 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.

**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. 04-16289 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-154-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 pertaining to blasting schedules and blaster certification. Indiana intends to revise its program to 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-154-FOR, by any of the following methods:

- *E-mail:* [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

Include Docket No. IN-154-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 Indiana 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](mailto: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,