

will purchase controlled substances from United States pharmacies rather than traveling outside the United States to make such purchases.

*Executive Order 12866*

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866, Section 1(b). This action has been determined to be a significant regulatory action. Therefore, this regulation has been reviewed by the Office of Management and Budget.

*Executive Order 12988*

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

*Executive Order 13132*

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

*Unfunded Mandates Reform Act of 1995*

This regulation will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 21 CFR Part 1301**

Administrative practice and procedure, Drug traffic control, Security measures.

■ For the reasons set out above, 21 CFR Part 1301 is amended as follows:

**PART 1301—[AMENDED]**

■ 1. The authority citation for 21 CFR Part 1301 is revised to read as follows:

**Authority:** 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 951, 952, 953, 956, 957.

■ 2. Section 1301.26 is revised to read as follows:

**§ 1301.26 Exemptions from import or export requirements for personal medical use.**

Any individual who has in his/her possession a controlled substance listed in schedules II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, may enter or depart the United States with such substance notwithstanding sections 1002–1005 of the Act (21 U.S.C. 952–955), provided the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the Bureau of Customs and Border Protection stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number.

(c) In addition to (and not in lieu of) the foregoing requirements of this section, a United States resident may import into the United States no more than 50 dosage units combined of all such controlled substances in the individual's possession that were obtained abroad for personal medical use. (For purposes of this section, a United States resident is a person whose residence (*i.e.*, place of general abode—meaning one's principal, actual dwelling place in fact, without regard to intent) is in the United States.) This 50 dosage unit limitation does not apply to controlled substances lawfully obtained in the United States pursuant to a prescription issued by a DEA registrant.

Dated: September 1, 2004.

**Michele M. Leonhart,**  
*Deputy Administrator.*

[FR Doc. 04–20628 Filed 9–13–04; 8:45 am]

**BILLING CODE 4410–09–P**

**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:** 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) and abandoned mine land reclamation plan (Indiana plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed revisions to and additions of statutes about performance bond release, the Indiana bond pool, and government-financed construction. Indiana intends to revise its program to be consistent with SMCRA and to improve operational efficiency.

**DATES:** Effective September 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226–6700. Internet address: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Indiana Program and Indiana Plan
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. 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 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.

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. Submission of the Amendment

By letter dated June 2, 2004 (Administrative Record No. IND-1728), the Indiana Department of Natural Resources (Department) 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 were considered in this final rule document. The Department sent the amendment to us at its own initiative. Sections 26 and 27 of HEA 1203 amend Indiana Code (IC) 14-34-6-7 and 14-34-6-10, respectively, concerning performance bond release. Sections 28, 29, and 30 of HEA 1203 amend IC 14-34-8-4, 14-34-8-6, and 14-34-8-11, respectively, concerning the Indiana bond pool. Sections 1, 31, and 32 of HEA 1203 amend or add IC 14-8-2-117.3, 14-34-19-15, and 2004-71-32, respectively, concerning government financing of abandoned mine land reclamation projects that involve the incidental extraction of coal.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42927). 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 August 18, 2004. We received comments from 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, 732.17, 884.14, and 884.15. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

### A. Performance Bond Release

Sections 26 and 27 of HEA 1203 amend the requirements of the Indiana program concerning performance bond release.

1. Section 26 of HEA 1203 amended IC 14-34-6-7 by designating the existing text as subsection (a) and by adding new subsection (b), which allows the Director of the Department of Natural Resources (Director) to initiate an application for the release of a performance bond. If the Director initiates an application for performance bond release, the Department must perform all notification and certification requirements otherwise imposed on the permittee.

While the counterpart Federal regulation at 30 CFR 800.40(a) allows a permittee to file an application for bond release, the Federal regulations are silent as to whether a regulatory authority may initiate bond release proceedings. However, a similar provision was approved for the Kentucky program on December 31, 1990 (55 FR 53490), and the Illinois program on April 7, 2000 (65 FR 18239). Under Indiana's proposal, bond release proceedings initiated by the Director must conform to the same procedural steps as a bond release initiated by the permittee. Thus, the public participation and notification requirements of section 519 of SMCRA and the Federal regulations at 30 CFR 800.40 would still apply when the Director initiates a bond release in Indiana. For the above reasons, we find that allowing the Director to initiate bond release does not make Indiana's performance bond release requirements at IC 14-34-6-7 less stringent than section 519(a) of SMCRA or less effective than the Federal regulation at 30 CFR 800.40(a). Therefore, we are

approving the revisions to IC 14-34-6-7. It is our understanding that Indiana will revise its implementing regulation at 312 Indiana Administrative Code (IAC) 25-5-16 to reflect the changes made to IC 14-34-6-7 in a future State program amendment.

2. Indiana's statute at IC 14-34-6-7 requires the requester of a performance bond release to publish a notice of the bond release request. Previously, only a permittee could request bond release and, therefore, must publish a notice (permittee's notice). In this rulemaking, Indiana proposed to allow the Director to initiate bond release proceedings. As a result, either the permittee or the Director is required to publish the notice depending on who initiated the bond release request. Therefore, section 27 of HEA 1203 amended IC 14-34-6-10(b)(2) by removing the word "permittee's" from the phrase "after the last publication of the permittee's notice." This change allows specified persons to request a public hearing regarding a performance bond release request within thirty (30) days after the last publication of the notice, regardless of who initiated the bond release request.

This change is appropriate and further clarifies that the notification requirements for bond release must be completed, regardless of whether the application was initiated by the permittee or the Director. We find that the change made to IC 14-34-6-10(b)(2) will not make it less stringent than section 519(f) of SMCRA or less effective than the counterpart Federal regulation at 30 CFR 800.40(f).

### B. Indiana Bond Pool

Sections 28, 29, and 30 of HEA 1203 amend the requirements of the Indiana program concerning Indiana's alternative bonding system (Indiana bond pool).

1. 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" at the end of each paragraph. Subsection (g) pertains to those operators who participate in the bond pool on the basis of the entire permit area. This subsection previously provided that 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 permit. Subsection (h) pertains to those operators who participate in the bond pool on the basis of a bond increment area under an existing permit. This subsection previously provided that

commencement of participation in the bond pool for the bond increment area constitutes an irrevocable commitment to participate in the bond pool for the duration of that surface coal mining permit. With the addition of the new phrase at subsections (g) and (h), a mine operator may withdraw from the bond pool by replacing bond pool liability with bonds acceptable under the Indiana surface coal mining and reclamation law.

There is no direct Federal counterpart to IC 14-34-8-4(g) and (h). However, requiring the operator to replace all bond pool liability with bonds acceptable under the Indiana program assures that the regulatory authority will have sufficient money available to complete the reclamation plan in the event of forfeiture, as required by 30 CFR 800.14(b). Also, because participation in the Indiana bond pool is optional, these changes will not affect our original approval of the Indiana bond pool (57 FR 14350, April 20, 1992). Therefore, we find that the changes to subsections (g) and (h) are not inconsistent with the requirements of section 509(c) of SMCRA or the Federal regulation at 30 CFR 800.11(e).

2. Section 29 of HEA 1203 amended IC 14-34-8-6(a) by changing a reference from "subsection (b)" to "subsection (c)" and redesignating existing subsections (b) and (c) as subsections (c) and (d). Section 29 of HEA 1203 also added a new subsection (b) to allow the Director to require operators to withdraw from the bond pool if the final release of a bond has not been obtained within ten years after the date of the last required report of the affected area for the permit, including new disturbances. The operator would have to replace the bond pool liability with bonds acceptable under the Indiana program. If the operator does not 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. Redesignated subsection (d) provides that an operator who is suspended must cease all surface mining operations until a new performance bond is furnished. When a new performance bond is executed, the bond pool has no additional liability for reclamation of the mine area.

There is no direct Federal counterpart to new IC 14-34-8-6(b). However, requiring the operator to replace all bond pool liability with bonds acceptable under the Indiana program assures that the regulatory authority will have sufficient money available to complete the reclamation plan in the event of forfeiture, as required by 30 CFR 800.14(b). Also, new subsection (b)

will provide an additional economic incentive for the permittee to comply with all reclamation provisions, as required by 30 CFR 800.11(e)(2). Therefore, we find that new subsection (b) is not inconsistent with the requirements of section 509(c) of SMCRA or the Federal regulation at 30 CFR 800.11(e).

3. At IC 14-34-8-11, Section 30 of HEA 1203 amended membership and membership appointment authority of the surface coal mine reclamation bond pool committee (committee). The committee makes recommendations to the Director on proposed expenditures from the bond pool and all new applications for admission to the bond pool. It acts in an advisory capacity to the Director and has no decision making functions.

Section 30 of HEA 1203 amended subdivision (a)(1) by removing the requirement that not more than three of the members belong to the same political party. It changed the authority for the appointment of members from the Governor of Indiana (Governor) to the Director. It also revised clause (a)(1)(C) by removing the requirement that one member of the committee be a representative of the public with a license as a certified public accountant and added the requirement that this member have knowledge of reclamation performance guarantees. Section 30 of HEA 1203 revised subsection (b) by removing the requirement that a member not be appointed to more than two full terms. It also revised subsection (b) to provide that the Director may remove an appointed member for cause. Previously, the Governor was authorized to perform this function. Section 30 of HEA 1203 revised subdivision (e)(1) by requiring the committee to meet as necessary to perform its duties, but not less than one time each year. This subdivision previously required the committee to meet as least two times each year. Section 30 of HEA 1203 amended subsection (f) to require the Director to report annually to the committee and to the Governor on the status of the bond pool. Previous subsection (f) required the Director to report semiannually.

Because the committee acts only in an advisory capacity to the Director, the revisions made to the requirements of subsections (a), (b), (e) and (f) will not affect the objectives and purposes of the Indiana bond pool. Therefore, we find that the revisions to IC 14-34-8-11 are not inconsistent with the requirements of section 509(c) of SMCRA or the Federal regulation at 30 CFR 800.11(e), and we are approving them.

### C. Government-Financed Construction

Sections 1, 31, and 32 of HEA 1203 amend or add new requirements to the Indiana program and plan concerning government financing of abandoned mine land reclamation projects that involve the incidental extraction of coal.

#### 1. Indiana Program

##### a. 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.

Indiana's definition of "governmental entity" lists various types of government entities, including Federal, State, county, city, and other local government bodies. There is no Federal counterpart to this definition. However, we find that the addition of a citation reference concerning the Department's procedures for abandoned mine land reclamation projects receiving less than 50 percent government funding will not make Indiana's previously-approved definition of "governmental entity" inconsistent with any of the requirements of SMCRA or the Federal regulations.

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

(1) Section 32 of HEA 1203 added a new definition for "government-financed construction" at IC 2004-71-32(a). This statutory definition is meant to take precedence over the current regulatory definition for "government-financed construction" at 312 IAC 25-1-57. The current definition at 312 IAC 25-1-57 defines "government-financed construction" as construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. The statutory definition provides for the same types of funding for construction funded 50 percent or more, plus provides for funding at less than 50 percent if construction is undertaken as an approved reclamation project under Title IV of SMCRA and the State counterpart statutes at IC 14-34-19. Both definitions provide that the term does not pertain to government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

At IC 2004-71-32(a), Indiana's statutory definition of "government-financed construction" contains language that is substantively similar to

and has the same meaning as the corresponding Federal definition at 30 CFR 707.5. Therefore, we find that IC 2004-71-32(a) is no less effective than the Federal definition, and we are approving it.

(2) Section 32 of HEA 1203 added a provision at IC 2004-71-32(b) that requires the Indiana Department of Natural Resources to amend its regulatory definition of "government-financed construction" at 312 IAC 25-1-57 before July 1, 2006, to correspond with the statutory definition at IC 2004-71-32(a). As discussed above, Indiana's regulatory definition at 312 IAC 25-1-57 does not currently allow for construction that is less than 50 percent government funded.

We agree that Indiana should amend its regulatory definition of "government-financed construction" to correspond with the statutory definition. Although the statutory definition of "government-financed construction" at IC 2004-71-32(a) takes precedence over the currently approved regulatory definition at 312 IAC 25-1-57, State regulations and statutes should be in agreement. Therefore, we are approving IC 2004-71-32(b).

(3) At IC 2004-71-32(c), section 32 of HEA 1203 added a provision which states that IC 2004-71-32 will expire July 1, 2007.

The State of Indiana authorizes its agencies to promulgate regulatory definitions, as well as other rules, needed to implement each agency's specific statutory requirements. Only those definitions that pertain to more than one agency are included in the Indiana Code. Thus, after Indiana amends its regulatory definition of "government-financed construction" at 312 IAC 25-1-57 to correspond with the proposed statutory definition at IC 2004-71-32(a), there will no longer be a need for the statutory definition. Therefore, we are approving IC 2004-71-32(c) with the understanding that Indiana will amend its regulatory definition before the July 1, 2007, expiration date.

## 2. 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 the Department to make specified determinations and maintain specified documentation for abandoned mine land reclamation projects receiving less than 50 percent government funding because of planned coal extraction incidental to the

reclamation of an abandoned mine land project. IC 14-34-19-15 outlines the procedures the Department needs to follow in approving abandoned mine land reclamation projects receiving less than 50 percent government funding. The required procedures are intended to ensure the appropriateness of the project being undertaken as an abandoned mine land reclamation project under the Indiana plan and not as a surface coal mining and reclamation operation under the Indiana program.

Because IC 14-34-19-15 contains requirements that are the same as or similar to the corresponding Federal regulation requirements at 30 CFR 874.17, we find that it is no less effective than the Federal regulation. Therefore, we are approving IC 14-34-19-15 as discussed below.

a. IC 14-34-19-15(a)(1) provides that the provisions of IC 14-34-19-15 apply when the Department is considering a mine land reclamation project under IC 14-34-1-2 or 312 IAC 25-2-3. IC 14-34-1-2 provides that the surface coal mining and reclamation law does not apply to the extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction under rules established by the Indiana program. Indiana's rule at 312 IAC 25-2-3 implements IC 14-34-1-2 by providing an exemption for coal extraction incidental to Federal, State, or local government-financed highway or other construction. IC 14-34-19-15(a)(2) further provides that the provisions of IC 14-34-19-15 apply when the level of funding for the abandoned mine land reclamation project will be less than 50 percent of the total cost because of planned coal extraction.

We find that IC 14-34-19-15(a) has requirements that are similar to and no less effective than the introductory paragraph of the counterpart Federal regulation at 30 CFR 874.17.

b. IC 14-34-19-15(b)(1) requires the Department to make specific determinations regarding the likelihood of the coal being mined under a surface coal mining and reclamation operations permit issued under the Indiana program. Subdivision (b)(2) requires the Department to determine the likelihood that nearby mining activities might create new environmental problems or adversely affect existing environmental problems. Subdivision (b)(3) requires the Department to determine the likelihood that reclamation activities might adversely affect nearby mining activities.

The only difference between IC 14-34-19-15(b) and the counterpart

Federal regulation at 30 CFR 874.17(a) is consultation language. The Federal regulation requires the abandoned mine land reclamation agency to consult with the Title V regulatory authority to make the required determinations for funding construction for less than 50 percent of the total cost because of planned coal extraction. Because the Department has the authority for and implements both the Indiana plan and the Indiana program, there is no need for the consultation language. Therefore, we find that IC 14-34-19-15(b) is no less effective than the Federal regulation at 30 CFR 874.17(a).

c. If a decision is made under subsection (b) to proceed with the abandoned mine land reclamation project, IC 14-34-19-15(c) requires the Department to make additional determinations concerning the limits of the incidental coal to be extracted and the delineation of boundaries of the abandoned mine lands reclamation project.

We find that IC 14-34-19-15(c) contains requirements that are substantively similar to and no less effective than the counterpart Federal regulation at 30 CFR 874.17(b).

d. IC 14-34-19-15(d) requires the following documentation to be included in the abandoned mine lands reclamation case file: (1) The determinations made under subsections (b) and (c); (2) the information taken into account in making the determinations; and (3) the names of the persons making the determinations.

We find that IC 14-34-19-15(d) is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 874.17(c).

e. For each project, IC 14-34-19-15(e) requires the Department to (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 the provisions of 30 CFR Subchapter R, IC 14-34-19, 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; and (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.

We find that IC 14-34-19-15(e) is substantively identical to and no less

effective than the counterpart Federal regulation at 30 CFR 874.17(d).

f. IC 14–34–19–15(f) requires the contractor to obtain a surface coal mining and reclamation operations permit for any coal extracted beyond the limits of incidental coal determined under subdivision (c)(1).

We find that IC 14–34–19–15(f) is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 874.17(e).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment, but did not receive any.

##### *Federal Agency Comments*

On June 10, 2004, under 30 CFR 732.17(h)(11)(i), 884.14(a)(2), 884.15(a), 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 and plan (Administrative Record No. IND–1730). The U.S. Fish and Wildlife Service responded on July 12, 2004 (Administrative Record No. IND–1731), that it noted no significant issues related to wildlife conservation in the 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 air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND–1730). 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 June 10, 2004, we requested comments on Indiana's amendment (Administrative Record No. IND–1730), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve the amendment Indiana sent to us on June 2, 2004. We are also taking this opportunity to correct the address listed at 30 CFR 914.10(a), which provides the location of the Indiana Department of Natural Resources' office where copies of the approved program are available for review.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program and plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Sections 405 and 503(a) of SMCRA require that the State's plan and 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*

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

##### *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*

With regard to the Indiana program, 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.

With regard to the Indiana plan, 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 and Tribal abandoned mine land reclamation plans and plan amendments because each program is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

##### *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. The determination for the Indiana program is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands.

The determination for the Indiana plan is based on the fact that the Indiana plan does not provide for reclamation and restoration of land and water resources adversely affected by past coal mining 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*

With regard to the Indiana program, 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)).

With regard to the Indiana plan, this rule does not require an environmental impact statement because 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 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 regulations did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 26, 2004.

**Charles E. Sandberg,**  
*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 914.10 is amended by revising paragraph (a) to read as follows:

**§ 914.10 State regulatory program approval.**

\* \* \* \* \*

(a) Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, IN 47438-9517.

\* \* \* \* \*

■ 3. 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
* * * * *	* * * * *	* * * * *
June 2, 2004	September 14, 2004	IC 14-8-2-117.3; 14-34-6-7, 14-34-6-10(b)(2); 14-34-8-4(g) and (h), 14-34-8-6, 14-34-8-11(a), (b), (e), and (f); 2004-71-32.

■ 4. Section 914.25 is amended in the table in paragraph (a) by adding a new

entry in chronological order by “Date of final publication” to read as follows:

**§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.**

(a) \* \* \*

Original amendment submission date	Date of final publication	Citation/description
June 2, 2004	September 14, 2004	IC 14-34-19-15.

\* \* \* \* \*  
 [FR Doc. 04-20664 Filed 9-13-04; 8:45 am]  
 BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 920**

[MD-054-FOR]

**Maryland Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Maryland regulatory program (the Maryland Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of Maryland Regulations (COMAR) concerning valid existing rights (VER). The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** September 14, 2004

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: (412) 937-2153. Internet: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION**

I. Background on the Maryland Program

- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Maryland 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 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 Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

**II. Submission of the Proposed Amendment**

By letter dated May 4, 2004 (Administrative Record Number MD-

583-11), Maryland sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises COMAR provisions concerning valid existing rights.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42943). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We received responses from 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. Any revisions we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

*[a] Revisions to Maryland's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

Maryland proposed revisions to the following rules containing language that is substantively identical to the corresponding sections of the Federal regulations.

State rule	Subject	Federal counterpart
26.20.10.01B.(7)(a) and (b) .....	Definition of Valid Existing Rights .....	30 CFR 761.5(a), (b)(1), (c) (Definition of Valid Existing Rights).
26.20.10.01-1 .....	Demonstration .....	30 CFR 761.5(b)(2)
26.20.10.02 and .02C .....	Standards .....	(Definition of Valid Existing Rights).
26.20.10.03A, B, C, D(2), and (H) .....	Prohibition .....	30 CFR 761.11, and 761.11(d)(1), (d)(2), (d)(2)(ii).
26.20.10.04 .....	Determination of Limits and Prohibitions ..	30 CFR 761.11(d)(2)(i), 761.17(a), (b), (c) and (d)(1).
26.20.10.05A, B, B(1) through B(7), B(9), C, D, and E ...	Exception for Existing Operations .....	30 CFR 761.12(a).
26.20.10.06A through C, D, D(2) through D(8), D(10), E, and F.	Submission of Valid Existing Rights Determination.	30 CFR 761.16(b), (b)(1) through (b)(4).
26.20.10.07 .....	Review of Valid Existing Rights Request	30 CFR 761.16(c) and (d).
	Decision on Valid Existing Rights .....	30 CFR 761.16(e) and (f).