

HCN1, vol. 1, Docket No. 01A-0313, April 12, 2001.

4. U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans, 2005*, 6th Edition, Washington, D.C.: U.S. Government Printing Office, (<http://www.health.gov/dietaryguidelines/dga2005/document/>), January 2005.

5. U.S. Food and Drug Administration, CFSAN/Office of Nutritional Products, Labeling, and Dietary Supplements, *Food Label and Package Survey 2000-2001*, (<http://www.cfsan.fda.gov/~dms/lab-flap.html>), May 2006.

6. Institute of Medicine of the National Academies, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids*, the National Academies Press, Washington, D.C., pp. 367-368, 2005.

7. RTI International, *FDA Labeling Cost Model, Final Report*, (<http://www.foodrisk.org/lcm.htm>), October 2004.

#### List of Subjects in 21 CFR Part 101

Food Labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Deputy Director for Regulatory Affairs, it is proposed that 21 CFR part 101 be amended as follows:

#### PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.81 is amended by revising paragraph (c)(2)(iii)(C) and by adding new paragraph (c)(2)(iii)(D) to read as follows:

##### § 101.81 Health claims: Soluble fiber from certain foods and risk of coronary heart disease (CHD).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(C) The food shall meet the nutrient content requirement in § 101.62 for a “low saturated fat” and “low cholesterol” food; and

(D) The food shall meet the nutrient content requirement in § 101.62(b)(2) for a “low fat” food, unless the food exceeds this requirement due to fat content derived from whole oat sources listed in paragraph (c)(2)(ii)(A) of this section.

\* \* \* \* \*

Dated: January 30, 2007.

**Michael M. Landa,**

Deputy Director, Regulatory Affairs, Center for Food Safety and Applied Nutrition.  
[FR Doc. E7-1849 Filed 2-5-07; 8:45 am]

**BILLING CODE 4160-01-S**

#### DEPARTMENT OF THE INTERIOR

##### Office of Surface Mining Reclamation and Enforcement

##### 30 CFR Part 914

[Docket No. IN-156-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). The Indiana Department of Natural Resources, Division of Reclamation (IDNR, department, or Indiana) proposes revisions to its rules concerning the definition of “government-financed construction”; underground mining reclamation plans for siltation structures, impoundments, dams, embankments, and refuse piles; performance bond release; surface mining permanent and temporary impoundments; surface mining primary roads; and inspections of sites. Indiana intends to revise its program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Indiana program and proposed amendments 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.t., March 8, 2007. If requested, we will hold a public hearing on the amendment on March 5, 2007. We will accept requests to speak at a hearing until 4 p.m., e.t. on February 21, 2007.

**ADDRESSES:** You may submit comments, identified by Docket No. IN-156-FOR, by any of the following methods:

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

Include Docket No. IN-156-FOR in the subject line of the message.

- **Mail/Hand Delivery:** Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area 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 Area Office: Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area 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, R.R. 2, Box 129, Jasonville, Indiana 47438-9517, **Telephone:** (812) 665-2207.

##### FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Chief, Alton Field Division—Indianapolis Area Office. **Telephone:** (317) 226-6700. **E-mail:** [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

##### SUPPLEMENTARY INFORMATION:

- Background on the Indiana Program
- Description of the Proposed Amendment
- Public Comment Procedures
- 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 December 11, 2006 (Administrative Record No. IND-1741), 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 required program amendment at 30 CFR 914.16(f) and to include changes made at its 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 25-1-57 "Government-Financed Construction" Defined

Indiana proposes to revise its definition of "government-financed construction" to read as follows:

"Government-financed construction" means construction funded at fifty percent (50%) or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Government financing at less than fifty percent (50%) may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 30 U.S.C. 1328) and IC 14-34-19. Construction funded through:

- (1) A government financing agency guarantee;
- (2) Insurance;
- (3) A loan;
- (4) Funds obtained through industrial revenue bonds or their equivalent; or
- (5) An in-kind payment; does not qualify as government-financed construction.

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

1. Indiana proposes to restructure and/or make minor wording changes to subsections (a)(1)(B); (a)(2)(A) and (C); (c); (e)(1) and (e)(4); and (f)(1).

2. At subsection (g)(3), Indiana proposes to remove the following sentence:

If necessary to protect the health or safety of persons or property or the environment, even though the volume of water impounded is less than one hundred (100) acre feet, the director may require an application to be made.

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

1. At subsection (a)(7), Indiana proposes to revise this subsection to remove the provision that allows persons to request an informal conference.

2. Indiana proposes to recodify existing subsections (b) through (f) as subsections (c) through (g), and existing subsection (h) as subsection (i). Indiana also proposes to remove the language in existing subsections (g) and (i), which pertains to filing written objections to proposed bond releases and requesting and holding a public hearing. A portion of the provisions in existing subsection (g) is currently found in subsection (a) and portions of the provisions in existing subsections (g) and (i) are found in newly added subsection (j).

3. Indiana proposes to add new subsection (b) to allow the director of IDNR to initiate an application for the release of bond. If a bond release application is initiated by the director of IDNR, the department will have to perform the notification and certification requirements otherwise imposed on the permittee.

4. At new subsection (d)(4) [existing subsection (c)(4)], Indiana proposes to change the last sentence to read as follows:

The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request if no public hearing or informal conference is held under subsection (i) or (j) or if an informal conference is held under subsection (i) or public hearing is held under subsection (j) within thirty (30) days after the informal conference or public hearing is completed.

5. Indiana proposes to add new subsection (h) to read as follows:

(h) A determination by the director under the provisions of this article or IC 14-34 is subject to review. An affected person may

obtain administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding.

6. Indiana proposes to revise new subsection (i) [existing subsection (h)] to read as follows:

(i) Upon receipt of written objection or a request for public hearing under subsection (a), the department, at the discretion of the director, may set a dispute under this section for an informal conference to resolve the objection. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of any of the following:

- (1) A permittee.
- (2) A person who files objections.
- (3) The department.
- (4) Another interested person.

8. Indiana proposes to add new subsection (j) to read as follows:

(j) If objections filed under subsection (a) are not resolved through an informal conference, the department shall hold a public hearing within a reasonable time following the receipt of the request. The public hearing shall be conducted as follows:

(1) The date, time, and location of the public hearing shall be sent to the permittee and other parties to the hearing and advertised by the department in a newspaper of general circulation in the county where the surface coal mining and reclamation operation proposed for bond release is located one (1) time each week for two (2) consecutive weeks.

(2) The requirements of IC 4-21.5-3 shall not apply to the conduct of the public hearing. The public hearing shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the public hearing. An electronic or stenographic record shall be made unless waived by all parties. The record shall be maintained and shall be accessible to the parties of the public hearing until final release of the applicant's performance bond or other equivalent guarantee under this article.

(3) The department shall furnish all parties of the public hearing with the following:

- (A) The written findings of the director based on the public hearing.
- (B) The reasons for the finding.
- (4) If all parties requesting the public hearing withdraw their request before the conference is held, the public hearing may be canceled.

### D. 312 IAC 25-6-20 *Surface Mining; Hydrologic Balance; Permanent and Temporary Impoundments*

1. Indiana proposes to restructure and/or make minor wording changes to subsections (a)(1); (a)(3)(A), (B), and (C); (a)(5); (a)(6); (a)(7)(B)(iii); (a)(9)(A) and (D); (b)(3); (b)(8)(B); (c)(1) and (2); (d); and (e).

2. Indiana proposes to remove the language "and located where failure would not be expected to cause loss of

life or serious property damage" from subsection (a)(3)(B). By removing this language, all impoundments not meeting the Class B or C criteria for dams in the Natural Resource Conservation Service (NRCS) publication Technical Release No. 60 (TR 60) or size or other criteria of 30 CFR 77.216(a) [except for coal mine waste impounding structures] must have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

3. Indiana also proposes to redesignate subsection (a)(9)(E)(ii) as new subsection (a)(9)(E)(iii), and to add the following new language at subsection (a)(9)(E)(ii):

(ii) Impoundments that are entirely contained within an incised structure such that the incised structure would completely contain the waters of the impoundment should failure occur and failure would not create a potential threat to public health and safety or threaten significant environmental harm.

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

1. At subdivision (2), Indiana proposes to revise the introductory paragraph to read as follows:

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

2. Indiana proposes to restructure and/or make minor wording changes to subdivisions (2)(A), (C), and (H); and (4)(B)(i).

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

1. Indiana proposes to restructure and/or make minor wording changes to subsections (f)(3)(E) and (F); (g)(2); (h)(1)(D)(ii); and (h)(3)(A).

2. At subsection (h)(1)(D)(i), Indiana proposes to remove the language "or permit revocation proceedings have been initiated and are being pursued diligently." By removing this language, the definition of "abandoned site" (if the site has previously been permitted or bonded) no longer includes a site where permit revocation proceedings have been initiated and are being pursued diligently.

### 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 Area 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-156-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 Area 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.t. on February 21, 2007. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the

public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

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

### IV. Procedural Determinations

*Executive Order 12630—Takings*

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that this rulemaking has no takings implications.

*Executive Order 12866—Regulatory Planning and Review*

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

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory

programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

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

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

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

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

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use

of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior certifies that a portion of the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this part of the rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that are 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: December 22, 2006.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

[FR Doc. E7-1863 Filed 2-5-07; 8:45 am]

**BILLING CODE 4310-05-P**

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 926**

**[SATS No. MT-027-FOR]**

**Montana 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 are announcing receipt of a proposed amendment to the Montana