

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on December 21, 2001.

Issued in Burlington, Massachusetts, on November 7, 2001.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01-28688 Filed 11-15-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN-152-FOR; State Program Amendment No. 2001-1]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with additional requirements, an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment concerns recodification of Indiana's administrative rules for coal mining and reclamation operations. It also includes revisions to the rules pertaining to the definition of "affected area," identification of interests, compliance information, general requirements for reclamation plans, public availability of information included in permit applications, and permit conditions. Indiana recodified its rules in response to Indiana legislation requiring all administrative rules to be readopted every seven years.

EFFECTIVE DATE: November 16, 2001.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301,

Indianapolis, Indiana 46204-1521. Telephone (317) 226-6700. Internet: IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. 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 on 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 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated August 21, 2001 (Administrative Record No. IND-1712), Indiana sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Indiana sent the amendment at its own initiative. Indiana recodified its administrative rules from Title 310 Indiana Administrative Code (IAC) 12 to Title 312 IAC 25. The amendment also includes revisions to Indiana's recodified rules at 312 IAC 25-1-8, definition of "affected area"; 312 IAC 25-4-17, surface mining permit applications-identification of interests; 312 IAC 25-4-18, surface mining permit applications-compliance information; 312 IAC 25-4-45, general requirements for reclamation plans, 312 IAC 25-4-58, underground mining permit applications-identification of interests; 312 IAC 25-4-59, underground mining permit applications-compliance information; 312 IAC 25-4-113, public availability of permit application information; and 312 IAC 25-4-118, permit conditions.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48390). 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. The public comment period closed on October 22, 2001. We did not receive any public comments.

During our review of the amendment, we identified concerns about Indiana's rules pertaining to identification of interests at 312 IAC 25-4-17(d), (e), and (f), general requirements for reclamation plans at 312 IAC 25-4-45, public availability of information contained in permit applications at 312 IAC 25-4-113, permit conditions at 312 IAC 25-4-118(4), and editorial errors. We notified Indiana of these concerns by letter dated September 18, 2001 (Administrative Record No. IND-1715).

In its letter of August 21, 2001 (Administrative Record No. IND-1712), Indiana indicated that it would make any necessary corrections or revisions to its rules at a later date.

III. Director's Findings

This section contains the Director's findings concerning the amendment to the Indiana program. We are making these findings in accordance with the criteria and procedural requirements of the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not discuss below are minor wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Recodification of Indiana's Rules

Indiana recodified its administrative rules for coal mining and reclamation operations by repealing its previously approved rules at 310 IAC 12 and replacing them with generally similar rules at 312 IAC 25. The State took this action because Indiana Code (IC) 4-22-2.5 requires the re adoption of administrative rules every seven years. Under IC 4-22-2.5-2, Indiana's previously approved rules at 310 IAC 12 will expire on January 1, 2002. In addition to renumbering and reformatting, Indiana made minor wording, editorial, and punctuation changes throughout the recodified rules.

Except as discussed in the findings below, we find that the recodification of Indiana's rules is nonsubstantive in nature and that the changes made in the recodification process do not alter the findings that we made for the previous rules. Therefore, we are approving the recodified rules, with the caveats noted below.

B. 312 IAC 25-1-8 Definition of Affected Area

Indiana recodified its definition of "affected area" at 312 IAC 25-1-8 with revisions to the currently approved language. The revised definition reads as follows:

Affected area means a land or water surface area which 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) An area upon which surface coal mining and reclamation operations are conducted.
- (3) Adjacent land the use of which is incidental to surface coal mining and reclamation operations.
- (4) An 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.
- (5) A site covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas.
- (6) An area upon which are sited structures, facilities, or other material on the surface resulting from, or incidental to, surface coal mining reclamation operations.
- (7) The area located above underground workings of a mine.

Indiana's revised definition contains substantively the same language as the counterpart Federal definition with minor wording and structural differences. It does not contain the language that is currently suspended from the Federal definition. [The Federal definition is suspended insofar as it excludes roads that are included in the definition of "surface coal mining operations" (51 FR 41952; November 20, 1986).] Because Indiana defines "affected area" to include all areas, lands, and sites specified in the Federal definition at 30 CFR 701.5, we find that Indiana's definition at 312 IAC 25-1-8 is no less effective than the Federal definition.

C. Surface Mining and Underground Mining Permit Application Requirements-Identification of Interests, Compliance Information, and Permit Conditions

On January 23, 1997, Indiana adopted revisions to its rules concerning identification of interests and compliance information and added a section to its rules on permit conditions. Indiana based the revisions and addition to its rules on the Federal regulations at 30 CFR 773.17, 778.13 and 778.14 that existed on January 23, 1997. These revised rules were submitted as part of this amendment.

On December 19, 2000 (65 FR 79582), we made changes to the Federal regulations cited above. In reviewing this amendment, we evaluated only those revisions that Indiana made on January 23, 1997, against the corresponding provisions of the December 19, 2000, Federal regulations. We did not compare the Indiana rules in their entirety with the December 19, 2000, regulations in their entirety. Indiana may need to make further changes to its rules after we evaluate the State program against the changes made to the Federal regulations on December 19, 2000, in their entirety. We will conduct that evaluation at a later date and notify Indiana in accordance with 30 CFR 732.17(d) and (e) if any additional changes are necessary.

Following are our findings on the revisions that Indiana made to its rules on January 23, 1997.

1. 312 IAC 25-4-17 Surface Mining Permit Applications-Identification of Interests and 312 IAC 25-4-58 Underground Mining Permit Applications-Identification of Interests

a. Indiana's rule at 312 IAC 25-4-17 specifies the information that must be included in a surface mining permit application for identification of interests. Indiana added 312 IAC 25-4-17(b)(5) to require an applicant for a surface coal mining permit to submit the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94.

As revised on December 19, 2000, the corresponding Federal regulation at 30 CFR 778.12(b) no longer requires this information. However, we find that its addition to the Indiana program will not cause the program to be less effective than the Federal regulations. Therefore, we are approving the addition of 312 IAC 25-4-17(b)(5) to the Indiana program.

b. Indiana's rule at 312 IAC 25-4-58(a) specifies the information that must be included in an underground mining permit application for identification of interests. The existing provisions were revised to make the new rule consistent with Indiana's surface mining permit application requirements for identification of interests at 312 IAC 25-4-17. The corresponding Federal regulations at 30 CFR 778.11, 778.12, and 778.13 apply to applications for both surface and underground mine permits. Therefore, Indiana's decision to make these underground mine permit

application information rules consistent with the corresponding surface mine permit application information rules is consistent with the Federal regulations. None of the specific changes that Indiana has made would cause the Indiana rules to be less effective than the counterpart Federal regulations. Therefore, we are approving the revisions to the Indiana rules.

However, as noted above in finding C, on December 19, 2000, we made numerous revisions to the counterpart Federal regulations. When we conduct a comparison of those rules in their entirety with the Indiana rules in their entirety, we may identify additional changes that Indiana will need to make for its program to remain no less effective than the Federal regulations. If we identify any such changes, we will notify Indiana in accordance with 30 CFR 732.17(d) and (e).

c. Indiana added the following provision at 312 IAC 25-4-58(b):

After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (a)(1) through (a)(4).

We find that Indiana's rule at 312 IAC 25-4-58(b) contains substantively the same requirements for updating information as the counterpart Federal regulation at 30 CFR 778.9(d). Therefore, it is no less effective than the Federal regulation, and we are approving its addition to the Indiana program.

d. Indiana added a provision at 312 IAC 25-4-58(c) that requires the applicant to submit the information required by 312 IAC 25-4-58 and 25-4-59 in any format that is issued by the commission. Indiana also specifies that the commission's format must conform to the format requirements of OSM.

There is no longer any direct counterpart Federal regulation to this State rule. As noted in the preamble to our December 19, 2000, final rule (65 FR 79644), "the regulatory authority should have the flexibility to prescribe whatever format it deems appropriate" for submittal of application information. Therefore, we find that nothing in Indiana's rule at 312 IAC 25-4-58(c) would cause its program to be less effective than the Federal regulations, and we are approving the addition of this rule.

2. 312 IAC 25-4-18 Surface Mining Permit Applications-Compliance Information and 312 IAC 25-4-59 Underground Mining Permit Applications-Compliance Information

Indiana's rules at 312 IAC 25-4-18 and 25-4-59 specify the information that must be included in a permit application concerning permit suspensions or revocations, bond forfeitures, and notices of violation.

a. At 312 IAC 25-4-18(a)(1)(A) and 25-4-59(a)(1)(A), Indiana removed the language "or in the process of revocation." As revised, these subsections require each application to contain a statement on whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has had a Federal or State coal mining permit suspended or revoked in the five years preceding the date of submission of the application.

The counterpart Federal regulation at 30 CFR 778.14(a)(1) requires a similar statement for those permits that were suspended or revoked, but not for those that are in the process of revocation. Therefore, we find that Indiana's removal of the language "or in the process of revocation" will not make these previously approved rules less effective than the Federal regulations. Accordingly, we are approving this change.

b. Indiana revised 312 IAC 25-4-18(a)(3) and 25-4-59(a)(3) to require that an application contain a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant. As revised on December 19, 2000, the corresponding Federal regulation at 30 CFR 778.14(c) no longer requires violation information for a person who is deemed or presumed to own or control the applicant. However, we find that Indiana's revision will not make its program less effective than the Federal regulations.

Indiana also added a provision to 312 IAC 25-4-18(a)(3) and 25-4-59(a)(3) that requires an applicant to certify that violations for which abatement periods have not expired are in the process of being abated. We find that Indiana's requirement is substantively similar to and therefore no less effective than the corresponding Federal regulation requirement at 30 CFR 778.14(c)(7).

Based on the above discussion, we are approving the revisions to 312 IAC 25-4-18(a)(3) and 25-4-59(a)(3). However,

as noted above in finding C, on December 19, 2000, we made numerous revisions to the counterpart Federal regulations. When we conduct a comparison of those rules in their entirety with the Indiana rules in their entirety, we may identify additional changes that Indiana will need to make for its program to remain no less effective than the Federal regulations. If we identify any such changes, we will notify Indiana in accordance with 30 CFR 732.17(d) and (e).

c. Indiana added the following new provision at 312 IAC 25-4-59(b):

(b) After the applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under this section.

We find that Indiana's rule at 312 IAC 25-4-59(b) contains substantively the same requirements for updating information as the counterpart Federal regulation at 30 CFR 778.9(d). Therefore, it is no less effective than the Federal regulation, and we are approving its addition to the Indiana program.

3. 312 IAC 25-4-118 Permit Conditions

Indiana added 312 IAC 25-4-118 to specify the conditions under which a permit is issued. Section 25-4-118(1) requires the permittee to conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area and bonded. Section 25-4-118(2) requires the permittee to conduct operations only as described in the approved application, except to the extent otherwise directed in the permit. Section 25-4-118(3) requires the permittee to comply with the terms and conditions of the permit and all applicable performance standards and requirements of the Indiana program. Section 25-4-118(4) requires permittees to allow authorized representatives of the Director of the Indiana Department of Natural Resources to have right of entry to surface coal mining and reclamation operations for inspections, monitoring, and enforcement and to be accompanied by private persons when the inspection is in response to an alleged violation reported by a private person. Section 25-4-118(5) requires the permittee to take all possible steps to minimize adverse impacts to the environment or public health and safety resulting from a noncompliance with any term or condition of the permit. Section 25-4-118(6) requires the permittee to comply with the requirements of the Indiana program for compliance, modification, or

abandonment of existing structures. Section 25-4-118(7) requires the operator to pay all reclamation fees. Section 25-4-118(8) requires the permittee to submit updates, if any, to the information previously submitted under 312 IAC 25-4-17(c) within 30 days after a cessation order is issued under 312 IAC 25-7-5, except where a stay of the cessation order is granted and remains in effect.

We find that, with the exception of the proposed provision in subdivision (4), 312 IAC 25-4-118(1) through (7) are substantively identical to and therefore no less effective than the counterpart Federal regulation at 30 CFR 773.17. We also find that the post-permit issuance information requirements of 312 IAC 25-4-118(8) are substantively the same as and therefore no less effective than the requirements of the Federal regulation at 30 CFR 774.12(a) and (b).

However, Indiana's rule at 312 IAC 25-4-118(4) only requires permittees to allow authorized representatives of the Director of the Indiana Department of Natural Resources to have right of entry to surface coal mining and reclamation operations for inspections, monitoring, and enforcement and to be accompanied by private persons under specified conditions. The counterpart Federal regulation at 30 CFR 773.17(d) requires permittees to allow authorized representatives of the State regulatory authority and the Secretary of the Interior to have right of entry and to be accompanied by private persons under the same specified conditions.

For the reasons discussed above, we are approving 312 IAC 25-4-118(1) through (8). However, we are requiring Indiana to revise 312 IAC 25-4-118(4) or otherwise modify its program to require permittees to allow authorized representatives of the Secretary of the Interior to have right of entry to surface coal mining and reclamation operations for purposes of inspections, monitoring, and enforcement and to be accompanied by private persons under specified conditions.

D. 312 IAC 25-4-17 Surface Mining Permit Applications-Identification of Interests

Indiana's rule at 312 IAC 25-4-17 specifies the information that must be included in a surface mining permit application for identification of interests. Indiana made nonsubstantive revisions to the previously approved provisions in this section to comply with formatting guidelines set forth by the Indiana Legislative Services Agency. However, in recodifying subsections (d), (e), and (f), Indiana inadvertently removed language that required an

applicant to submit the information in subsections (d), (e), and (f) with an application. Therefore, while we are generally approving the recodified version of Indiana's rule as having no changes that would cause the State program to be less effective than the corresponding Federal regulation, we are requiring Indiana to revise 312 IAC 25-4-17(d), (e), and (f) to clarify that the information listed in those subsections must be submitted with the permit application.

E. 312 IAC 25-4-45 Surface Mining Permit Applications-General Requirements For Reclamation Plans

Indiana recodified its previously approved general requirements for reclamation plans at 312 IAC 25-4-45. We find that, with one exception, the recodified rule is substantively the same as and therefore no less effective than the counterpart Federal regulation at 30 CFR 780.18. In the recodification process, Indiana removed "total depth" as one of the factors that an operator is to evaluate to demonstrate the suitability of topsoil substitutes or supplements at 312 IAC 25-4-45(b)(4). We consider "total depth" to be one of the factors that must be evaluated to demonstrate the suitability of topsoil substitutes or supplements. Therefore, we are approving 312 IAC 25-4-45 with the requirement that Indiana revise 312 IAC 25-4-45(b)(4) to require the demonstration of the suitability of topsoil substitutes or supplements to also be based upon analysis of the "total depth" of the different kinds of soils.

F. 312 IAC 25-4-113 Public Availability of Permit Application Information

Indiana recodified its previously approved provisions concerning public availability of permit application information at 312 IAC 25-4-113 with two exceptions: (1) Indiana did not recodify previously approved language that allows a person to oppose or seek disclosure of confidential information; and (2) Indiana did not recodify a previously approved provision concerning the confidentiality of information on the nature and location of archaeological resources on public and Indian land. These omissions have the effect of removing those provisions from the Indiana program.

Apart from the two noted exceptions, Indiana's rule at 312 IAC 25-4-113 contains substantively the same requirements for public availability of permit application information as the counterpart Federal regulation at 30 CFR 773.6(d). Therefore, we find that, apart from those exceptions, the Indiana

rule is no less effective than the Federal regulation.

For the reasons discussed above, we are both approving 312 IAC 25-4-113 and requiring Indiana to (1) add language at 312 IAC 25-4-113(f) or otherwise revise its program to allow a person to oppose or seek disclosure of confidential information and (2) add a provision, consistent with 30 CFR 773.6(d)(3)(iii), that classifies information on the nature and location of archeological resources on public land and Indian land as qualified confidential information in accordance with the Archeological Resources Protection Act of 1979.

IV. Summary and Disposition of Comments

Federal Agency Comments

On August 24, 2001, as required by section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND-1714). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the 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 the EPA for its concurrence.

As required by 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND-1714). The 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 for amendments that may have an effect on historic properties. On August 24, 2001, we requested comments on Indiana's amendment (Administrative Record No. IND-1714), but we received no response to our request.

Public Comments

We requested public comments on the proposed amendment, but we did not receive any.

V. Director's Decision

Based on the above findings, we approve, with additional requirements, the amendment as sent to us by Indiana on August 21, 2001. Findings C.3, D, E, and F discuss the additional changes that we are requiring in 312 IAC 25-4-118, 25-4-17, 25-4-45, and 25-4-113.

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

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Indiana program, we will recognize only the statutes, regulations and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Indiana of only those provisions.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

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 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 under SMCRA.

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, to the extent allowed by law, 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 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 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

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 22, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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

PART 914—INDIANA

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

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

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

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
August 21, 2001	November 16, 2001	Recodification of rules from 310 IAC 12 to 312 IAC 25; nonsubstantive revisions to those rules; substantive revisions to 312 IAC 25–1–8, 25–4–17, 25–4–18, 25–4–45, 25–4–58, 25–4–59, 25–4–113, and 25–4–118.

3. Section 914.16 is amended by adding paragraphs (jj), (kk), (ll), and (mm) to read as follows:

§ 914.16 Required program amendments.

(jj) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be

proposed, together with a timetable for adoption, to revise 312 IAC 25–4–17(d), (e), and (f) or otherwise modify the Indiana regulatory program to clarify that the information specified in those

subsections must be submitted with the permit application.

(kk) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise 312 IAC 25-4-118(4) or otherwise modify the Indiana regulatory program to require permittees to allow authorized representatives of the Secretary of the Interior to have right of entry to surface coal mining and reclamation operations for purposes of inspections, monitoring, and enforcement and to be accompanied by private persons under the conditions specified in 30 CFR 773.17(d)(2).

(ll) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise 312 IAC 25-4-45(b)(4) or otherwise modify the Indiana regulatory program to require the demonstration of the suitability of topsoil substitutes or supplements to also be based upon analysis of the "total depth" of the different kinds of soils.

(mm) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption, to:

(1) Revise 312 IAC 25-4-113(f) or otherwise modify the Indiana program to allow a person to oppose or seek disclosure of confidential information.

(2) Revise 312 IAC 25-4-113 or otherwise modify the Indiana program to add a provision, consistent with 30 CFR 773.6(d)(3)(iii), that classifies information on the nature and location of archeological resources on public land and Indian land as qualified confidential information in accordance with the Archeological Resources Protection Act of 1979.

[FR Doc. 01-28760 Filed 11-15-01; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND-042-FOR; Amendment No. XXXI]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is

approving a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to its statutes concerning references to the State Historical Society and the title of the persons who head that agency. North Dakota revised its program to clarify ambiguities.

EFFECTIVE DATE: November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Casper Field Office Director, Telephone: 307/261-6550; Internet address: Gpadgett@OSMRE.GOV

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the North Dakota 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 this criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, and 934.30.

II. Submission of the Proposed Amendment

By letter dated May 9, 2001, North Dakota sent us an amendment to its program (Amendment number XXXI), administrative record No. ND-FF-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to make changes at its own initiative.

We announced receipt of the proposed amendment in the June 6, 2001 **Federal Register** (66 FR 30347). 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 (administrative record No. ND-FF-04). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 5, 2001. We received one comment from the public and two comments from Federal agencies.

III. Director'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.

Minor Revisions to North Dakota Statutes

North Dakota proposed minor wording and editorial changes in its Senate Bill 2424 to the following previously-approved statute:

North Dakota Century Code Section 38-14.1, Surface Mining and Reclamation Operations

Section 4. Amendment. NDCC 38-14.1-10. Necessity of Permit—Exception.

Changes the name of the State Historical Board to the State Historical Society and the name of the superintendent to the director. Changes two "prior tos" to "before." Changes "Any person or operator may engage in the inventorying and evaluation of cultural resources * * *." to "A person or operator shall * * *." A few other minor changes were made.

Section 5. Amendment. NDCC 38-14.1-14.u. Cultural resource information including all of the following:

Changes in five places, "superintendent" to "director."

Changes in one place, "board" to "society."

Section 6. Amendment. NDCC 38-14.1-21.2. Approval or modification of the permit or permit revision application.

Changes "board" to "society." Changes "shall" to "must."

Section 7. Amendment. NDCC 38-14.1-30.1. Right to administrative review on rulings.

Changes "board" to "society." Changes "superintendent" to "director." Miscellaneous very minor editorial changes.

Section 8. Amendment. NDCC 38-14.1-37.2.d. Collection of cultural resource information.

Changes "board" to "society" and changes "superintendent" to "director."

Because all of the aforementioned changes are minor, we find that they