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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 914**

[SPATS No. IN-136-FOR; State Program Amendment No. 95-4]

**Indiana Regulatory Program**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions and additions to its rules pertaining to repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by coal mining operations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew R. Gilmore, Director, Indianapolis Field Office, Office of

Surface Mining Reclamation and Enforcement, Minton—Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204-1521, Telephone (317) 226-6700.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Indiana 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 Indiana Program**

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16

**II. Submission of the Proposed Amendment**

By letter dated January 14, 1997 (Administrative Record No. IND-1551), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to a May 20, 1996, letter (Administrative Record No. IND-1540) that OSM sent to Indiana in accordance with 30 CFR 732.17(c)

OSM announced receipt of the proposed amendment in the February

18, 1997. **Federal Register** (62 FR 7189), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 20, 1997.

During its review of the amendment, OSM identified some concerns pertaining to minor word omissions and spelling and typographical errors. OSM notified Indiana of these concerns by letter dated March 26, 1997 (Administrative Record No. IND-1562).

By letter dated May 1, 1997 (Administrative Record NO. IND-1570), Indiana responded to OSM's concerns by stating that the necessary corrections will be achieved pursuant to a published Errata. Based upon the State's response and the nature of the concerns, OSM did not reopen the comment period.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Indiana's Regulations That Are Substantively Identical to the Corresponding Federal Regulations*

Topic	State regulations	Federal counterpart regulations
Definition for "Drinking, domestic, or residential water supply."	310 IAC 12-0.5-39.5 .....	30 CFR 701.5
Definition for "Material damage" .....	310 IAC 12.05-72.1 .....	30 CFR 701.5
Definition for "Noncommercial building" .....	310 IAC 12.05-75.5 .....	30 CFR 701.5
Definition for "Occupied residential dwelling and structures related thereto" .....	310 IAC 12.0-77.5 .....	30 CFR 701.5
Definition for "Replacement of water supply" .....	310 IAC 12.0.5-107.5 .....	30 CFR 701.5
Protection of hydrologic balance .....	310 IAC 12-3-81(c)(2) .....	30 CFR 784.14(e)(3)(iv)
Subsidence control plan .....	310 IAC 12-3-87.1 .....	30 CFR 784.20
Water rights and replacement .....	310 IAC 12-5-94 .....	30 CFR 817.41(j)
Subsidence control: General requirements .....	310 IAC 12-5-130.1 .....	30 CFR 817.121

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal rules.

**IV. Summary and Disposition of Comments**

*Public Comments*

The Director solicited public comments and provided an opportunity

for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program

(Administrative Record No. IND-1553). OSM received two comments; one from the U.S. Department of Labor Mine Safety and Health Administration and the other from the U.S. Fish and Wildlife Service (Administrative Record Nos. IND-1560 and IND-1559, respectively). The Mine Safety and Health Administration responded that it had no comments on the proposed amendment. The U.S. Fish and Wildlife Service commented that it could not

determine if Indiana's regulations protect fish and wildlife habitats from subsidence effects to the same extent that they are protected by surface mining regulations. Indiana's proposed regulations concerning subsidence are substantially identical to the Federal regulations and, therefore, are not inconsistent with the Federal requirements. The appropriateness of the Federal regulations is not at issue in this rulemaking.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND-1553). EPA did not respond to OSM's request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IND-1553). Neither SHPO nor ACHP responded to OSM's request.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Indiana on January 14, 1997, and pursuant to the State's letter dated May 1, 1997.

The Director approves the rules as proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning

the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*Executive Order 12866*

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

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such 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.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since 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 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 corresponding 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 corresponding Federal regulations.

*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: July 29, 1997.

**Brent Wahlquist,**

*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
January 14, 1997	August 25, 1997	310 IAC 12-0.5-39.5, 72.1, 75.5, 77.5, 107.5; 12-3-81, 87.1; 12-5-94, 130.1

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[ND-036-FOR, Amendment No. XXIV]

#### North Dakota Regulatory Program

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

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

**SUMMARY:** 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). North Dakota proposed deletions of statutes pertaining to the North Dakota Reclamation Research Advisory Committee. The amendment revised the North Dakota program to improve operational efficiency.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Casper Field Office Director, Telephone: (307) 261-6550, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, *Federal Register* (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

##### II. Proposed Amendment

By letter dated May 2, 1997, North Dakota submitted a proposed amendment to its program (amendment No. XXIV, administrative record No. ND-Y-01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provisions of the North Dakota Century Code (NDCC) that North Dakota proposed to delete were: NDCC 38-14.1-04.1, Reclamation

Research Advisory Committee; NDCC 38-14.1-04.2, advisory committee responsibilities; and NDCC 38-14.1-04.3, reclamation research objectives.

OSM announced receipt of the proposed amendment in the June 5, 1997, *Federal Register* (62 FR 30800), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND-Y-06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 7, 1997.

##### III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on May 2, 1997, is not inconsistent with SMCRA. Accordingly, the Director approves the proposed amendment.

*NDCC 38-14.1-04.1, 2, and 3, Reclamation Research Advisory Committee; Advisory Committee Responsibilities; Reclamation Research Objectives*

These actions established the Reclamation Research Advisory Committee, enumerated its responsibilities, and listed its objectives. As stated in the narrative that accompanied this State Program Amendment, the Committee was set up to review and inventory reclamation research projects that have been conducted in North Dakota, and to review and recommend proposed research projects that would be funded and administered by the Public Service Commission. Through the Committee, the Public Service Commission has carried out the reviews and inventories of reclamation research projects that have been carried out in North Dakota. With the closing of the North Dakota State University's Land Reclamation Research Center in Mandan and with very few other active reclamation research projects in the state, there is no longer a need for updating this inventory in the future. In addition, except for a few abandoned mined land research projects that were completed with Federal funds, no funds have been available to the Commission for carrying out reclamation research and no funds are anticipated for Commission funded reclamation research in the future. Since there is no longer a need for the committee, the North Dakota Legislative voted, and the Governor signed, legislation to repeal the provisions establishing it. Since the provisions concerning the Reclamation Research

Advisory Committee have no counterpart in SMCRA, repealing the provisions is not inconsistent with SMCRA.

##### IV. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

###### 1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

###### 2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(1)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

The U.S. Fish and Wildlife Service responded on June 25, 1997, that it believed the proposed changes by North Dakota are logical and reasonable (administrative record No. ND-Y-02).

The U.S. Army Corps of Engineers responded on June 24, 1997, that it concurs with the elimination of the committee (administrative record number ND-Y-04).

###### 3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(1)(i), OSM solicited comments from EPA (administrative record No. ND-Y-05). It responded June 26, 1997, with a "no comment" letter (administrative record No. ND-Y-03).

###### 4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND-Y-05). Neither SHPO nor ACHP responded to OSM's request.

##### V. Director's Decision

Based on the above finding, the Director approves North Dakota's proposed amendment as submitted on May 2, 1997. The Director approves, as discussed in the Director's Finding Section, deletion of NDCC 38-14.1-04.1, Reclamation Research Advisory Committee; NDCC 38-14.1-04.2, Advisory Committee Responsibilities; and NDCC 38-14.1-04.3, Reclamation Research Objectives.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being