significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission amends 28 CFR Part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.1(c), (d), and (e) are revised to read as follows:

§ 2.1 Definitions.

* * * * *

(c) The term *National Appeals Board* refers to the three-member Commission sitting as a body to decide appeals taken from decisions of a Regional Commissioner, who participates as a member of the National Appeals Board. The Vice Chairman shall be Chairman of the National Appeals Board.

(d) The term *National Commissioners* refers to the Chairman of the Commission and to the Commissioner who is not serving as the Regional Commissioner in respect to a particular case.

(e) The term *Regional Commissioner* refers to Commissioners who are assigned to make initial decisions, pursuant to the authority delegated by these rules, in respect to prisoners and parolees in regions defined by the Commission.

* * * * *

3. 28 CFR Part 2, § 2.17(a) is revised to read as follows:

§ 2.17 Original jurisdiction cases.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a majority of the Commission, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of two votes, with the Regional Commissioner and the National Commissioners each having one vote.

* * * * *

4. 28 CFR Part 2, § 2.26(b) is revised to read as follows:

§ 2.26 Appeal to National Appeals Board.

* * * * *

(b)(1) The National Appeals Board may: Affirm the decision of a Regional Commissioner on the vote of a single Commissioner other than the Commissioner who issued the decision from which the appeal is taken; or modify or reverse the decision of a Regional Commissioner, or order a new hearing, upon the concurrence of two Commissioners. The Commissioner first reviewing the case may in his discretion circulate the case for review and vote by the other Commissioners notwithstanding his own vote to affirm the Regional Commissioner's decision. In such event, the case shall be decided by the concurrence of two out of three votes.

(2) All Commissioners serve as members of the National Appeals Board, and it shall in no case be an objection to a decision of the Board that the Commissioner who issued the decision from which an appeal is taken participated as a voting member on appeal.

* * * * *

5. 28 CFR Part 2, § 2.27(a) is revised to read as follows:

§ 2.27 Petition for reconsideration of original jurisdiction cases.

(a) A petition for reconsideration may be filed with the Commission in cases decided under the procedure specified in § 2.17 within thirty days of the date of such decision. A form is provided for this purpose. A petition for reconsideration will be reviewed at the next regularly scheduled meeting of the Commission provided the petition is received thirty days in advance of such meeting. Petitions received by the Commission less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting. The concurrence of two Commissioners shall be required to modify or reverse the decision for which reconsideration is sought. If such concurrence is not obtained, the previous decision shall stand. A decision under this rule shall be final.

* * * * *

6. 28 CFR Part 2, § 2.28(f) is revised to read as follows:

§ 2.28 Reopening of cases.

* * * * *

(f) *New adverse information.* Upon receipt of new and significant adverse information that is not covered by paragraphs (a) through (e) of this section, a Commissioner may refer the case to the National Commissioners with his recommendation and vote to schedule the case for a special reconsideration hearing. Such referral shall automatically retard the prisoner's scheduled release date until a final decision is reached in the case. The decision to schedule a case for a special reconsideration hearing shall be based on the concurrence of two Commissioner votes, including the vote of the referring Commissioner. The hearing shall be conducted in accordance with the procedures set forth in §§ 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

7. 28 CFR Part 2, § 2.64 is revised to read as follows:

§ 2.64. Quorum.

Any Commission action authorized by law may be taken on a majority vote of the Commissioners holding office at the time the action is taken.

§ 2.67 [Removed]

8. 28 CFR Part 2, § 2.67 is removed.

Dated: October 21, 1996.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 96–27303 Filed 10–28–96; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–119–FOR; State Amendment No. 94–5]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with exceptions and additional requirements, 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). The amendment consists of changes to the Indiana surface mining rules concerning OSM Regulatory Reform I and III issues, required program amendments, and State initiatives. The primary focus of

the amendment is on hydrology, impoundments, roads, support facilities, and additional miscellaneous issues. This amendment is intended to resolve outstanding issues that remain in the Indiana program resulting from changes to the Federal program. The amendment is also intended to add changes desired by the State.

EFFECTIVE DATE: October 29, 1996.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

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

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 32071). Subsequent actions concerning the conditions of approval and program amendments can be found at CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

Since July 29, 1982 (the date of conditional approval of the Indiana program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Indiana on May 22, 1985 (Regulatory Reform I), and on September 20, 1989 (Regulatory Reform III), that a number of Indiana program rules are less effective than or inconsistent with the revised Federal requirements.

By letter dated October 15, 1993 (Administrative Record Number IND–1300), the Indiana Department of Natural Resources (IDNR) submitted to OSM State program amendment package #93–6, which consisted of revisions to 52 sections of the Indiana rules. The revisions addressed changes to the Indiana program that were identified in the two letters referred to above, and certain required program amendments identified at 30 CFR 914.16. The State has also proposed additional changes that are designed to further improve the Indiana program. The primary focus of the submittal is on hydrology, impoundments, roads, support facilities, and termination of jurisdiction. OSM reviewed the proposed #93–6 amendments, and provided Indiana with a detailed list of comments concerning the amendments.

By letter dated September 26, 1994 (Administrative Record Number IND–1401), Indiana submitted proposed amendment #94–5 as a revised replacement for amendment #93–6. OSM reviewed amendment #94–5 and submitted comments to Indiana by letter dated July 28, 1995 (Administrative Record Number IND–1505). Indiana responded by letter dated August 16, 1995 (Administrative Record Number IND–1506).

OSM announced receipt of proposed amendment #93–6 in the December 16, 1993, Federal Register (53 FR 65679), 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 January 18, 1994.

OSM announced receipt of proposed amendment #94–5 in the October 20, 1994, Federal Register (59 FR 52943), 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 November 21, 1994. No one requested an opportunity to speak at the public hearing, so no hearing was held.

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.

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

The following rulemaking actions are being proposed by Indiana:

Rule number	Subject	Federal counterpart (30 CFR)
310 IAC 12–0.5–78.7	Definition of ''other treatment facilities.''	701.5
310 IAC 12–0.5–91.5	Definition of ''previously mined area.''	701.5
310 IAC 12–0.5–109	Definition of ''road.''	701.5
310 IAC 12–3–30	Permit applications; hydrology	780.21(a)
310 IAC 12–3–32	Permit applications; ground water	780.21(b)
310 IAC 12–3–33	Permit applications; surface water	780.21(b)
310 IAC 12–3–34	Permit application; alternative water supply	780.21(e)
310 IAC 12–3–41	Permit applications; general requirements	780.11(a), (b)
310 IAC 12–3–47	Permit applications; protection of hydrologic balance	780.21
310 IAC 12–3–55	Permit applications; transportation facilities	780.37(a)
310 IAC 12–3–68	Underground permits; hydrology	784.14(a)
310 IAC 12–3–70	Underground permits; ground water	784.14(b), (h)
310 IAC 12–3–71	Underground permits; surface water information	784.14(b)(2), (l)
310 IAC 12–3–81	Underground permits; protection of hydrologic balance	784.14(g), (e)
310 IAC 12–3–91	Underground mining; return of coal processing waste to abandoned underground workings	784.25
310 IAC 12–5–17	Surface mining; water quality standards and effluent limitations	816.42
310 IAC 12–5–20	Surface mining; sediment control measures	816.45
310 IAC 12–5–27	Surface mining; surface and ground water monitoring	816.41
310 IAC 12–5–31	Hydrologic balance; diversions, impoundments, and treatment facilities	816.56
310 IAC 12–5–39	Disposal of excess spoil	816.71
310 IAC 12–5–41	Surface mining; general requirements	816.81
310 IAC 12–5–42	Coal processing waste banks; site inspection; construction requirements	816.83
310 IAC 12–5–44	Coal mine waste	816.83
310 IAC 12–5–48	Surface mining; dams and embankments; general requirements	816.84
310 IAC 12–5–50	Coal processing waste; dams and embankments; design and construction	816.84

Rule number	Subject	Federal counterpart (30 CFR)
310 IAC 12–5–69	Surface mining; roads	816.150
310 IAC 12–5–70	Other transportation facilities	816.181
310 IAC 12–5–83	Underground mining; water quality standards and effluent limitations	817.42
310 IAC 12–5–86	Underground mining; sediment control measures	817.46
310 IAC 12–5–92	Underground mining; surface and ground water monitoring	817.41
310 IAC 12–5–96	Underground mining; postmining rehabilitation of siltation structures, diversions, impoundments, and treatment facilities.	817.56
310 IAC 12–5–104	Underground mining; disposal of underground development waste and excess spoil	817.71
310 IAC 12–5–105	Underground mining; coal processing waste banks; general requirements	817.81
310 IAC 12–5–106	Underground mining; coal processing waste banks; site inspection	817.83
310 IAC 12–5–108	Underground mining; coal processing waste banks; construction requirements	817.83
310 IAC 12–5–112	Underground mining; coal processing waste; dams and embankments; general requirements	817.84
310 IAC 12–5–114	Underground mining; dams and embankments; design and construction	817.84
310 IAC 12–5–137	Underground mining; roads	817.150
310 IAC 12–5–144	Auger mining; additional performance standards	819.15
310 IAC 12–6–19	Termination of jurisdiction	700.11

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

B. Revisions to Indiana's Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. *310 IAC 12–3–49/83 Permit applications; ponds, impoundments, refuse piles, coal mine waste dams and embankments.*

The changes to these sections add language substantively identical to and no less effective than the Federal counterparts at 30 CFR 780.25 and 784.16. However, subsections 49/83(e)(3) lack a requirement for a stability analysis of each structure as required by 30 CFR 780.25(f) and 784.16(f). Therefore, the Director is requiring that the Indiana program be further amended to provide for a stability analysis as is required by 30 CFR 780.25(f) and 784.16(f).

The Director notes that Indiana lacks certain counterpart provisions to Federal provisions found at 30 CFR 780.25(a), (a)(2), and (a)(3) that were amended in part on October 20, 1994, at 59 FR 53022. The Federal regulations were amended primarily to incorporate by reference certain criteria relating to dam classification found in U.S. Soil Conservation Service (SCS) Technical Release No. 60 (TR–60), 1985, in order to ensure that the permitting requirements for impoundments are consistent with the performance standards for impoundments and that both are tied to certain SCS and Mine Safety and Health Administration (MSHA) requirements. In a future 30 CFR part 732 letter, OSM will notify Indiana of the additional revisions to its program that are necessary to be no less effective than the revised Federal regulations discussed above.

2. *310 IAC 12–3–55.1/90.5 Permit applications; road systems.*

These new sections are substantively identical to the counterpart Federal regulations at 30 CFR 780.37 and 784.24 with the following exceptions. Subsections 55.1/90.5(c) cross-reference the design requirements of 310 IAC 12–5–69.5/137.5. The design provisions in 310 IAC 12–5–69.5 (2)(B) and 12–5–137.5(2) lack a technical basis on which to judge whether or not a road embankment is stable. The Director is approving the proposed provisions, but notes that subsections (c) cross reference sections 310 IAC 12–5–69.5/137.5 which are less effective to the extent described in Finding B–6, below.

3. *310 IAC 12–3–127 Permit reviews; approval for transfer, assignment, or sale of permit rights.*

The Director finds the proposed amendments substantively identical to the counterpart federal regulations at 30 CFR 773.15. In addition, the Director is requiring that 310 IAC 12–3–127(c)(4), introductory paragraph, also be amended to include the phrase ''or by any person who owns or controls the applicant'' after the word ''applicant'' in line 3, and the phrase ''or person who owns or controls the applicant'' after the word ''applicant'' in line 7.

4. *310 IAC 12–5–21/87 Surface mining; siltation structures.*

The Director finds these amendments to be substantively identical to the counterpart Federal regulations at 30 CFR 816/817.46 (b) and (c) and 30 CFR 816/817.49(a)(9) except as noted below. The proposed language at subsections (a)(3) provide that professional land surveyors may certify the construction of siltation structures. The Federal regulations at 30 CFR 816/817.46(b)(3) and 816/817.49(a)(11)(iv) authorize professional land surveyors to inspect and certify certain impoundments only in States which authorize land surveyors to prepare and certify plans in accordance with 30 CFR 780.25(a). Indiana does not authorize land surveyors to prepare and certify such plans. Therefore, the proposed language is less effective than the Federal regulations to the extent that land surveyors would be allowed to inspect and certify the construction of siltation structures. The Director is approving 310 IAC 12–5–21/87(a)(3) except to the extent that the provisions authorize land surveyors to inspect and certify the construction of siltation structures. Therefore, Indiana must remove from 310 IAC 12–5–21/87(a)(3) the language concerning land surveyors that is not approved.

The Director notes that the provisions at subsections (d)(2) do not include criteria for impoundments meeting the SCS Class B or C criteria as provided in 30 CFR 816.46(c)(2) and 816.49(a)(9). These Federal regulations were amended in part on October 20, 1994, at 59 FR 53022. The Federal regulations were amended primarily to incorporate by reference certain criteria relating to dam classification found in U.S. Soil Conservation Service (SCS) Technical Release No. 60 (TR–60), 1985, in order to ensure that the permitting requirements for impoundments are consistent with the performance standards for impoundments and that both are tied to certain SCS and Mine Safety and Health Administration (MSHA) requirements. In a future 30 CFR Part 732 letter, OSM will notify Indiana of the additional revisions to its program that are necessary to be no less effective than the revised Federal regulations discussed above.

5. *310 IAC 12–5–24/90 Surface mining; permanent and temporary impoundments.*

The Director finds the proposed amendments to these sections to be similar to and no less effective than the counterpart Federal regulations at 30 CFR 816/817.49, with the following exceptions.

At proposed 310 IAC 12–5–24/90(a)(9)(B), Indiana is adding language to authorize qualified registered professional land surveyors to certify certain impoundment inspections. The Federal regulations at 30 CFR 816/817.49(a)(11)(iv) authorize professional land surveyors to inspect and certify certain impoundments as required by 816/817.49(a)(11) only in States which authorize land surveyors to prepare and certify plans in accordance with 30 CFR 780.25(a). Indiana does not authorize land surveyors to prepare and certify such plans. Therefore, the proposed language is less effective than the Federal regulations at 30 CFR 816/817.49(a)(11)(iv) to the extent that land surveyors would be allowed to inspect and certify certain impoundments. The Director is approving 310 IAC 12–5–24/90(a)(9)(B) except to the extent that the provisions authorize land surveyors to inspect and certify impoundments. Therefore, Indiana must remove from 310 IAC 12–5–21/87(a)(3) the language concerning land surveyors that is not approved.

At proposed 310 IAC 12–5–24/90(a)(9)(E), Indiana is adding language to authorize an exemption to the quarterly inspection requirements at 12–5–24/90(a)(9)(E). There are no Federal counterparts to the proposed language, but OSM has approved similar language in Illinois (see 56 FR 64988; December 13, 1991). In the Illinois finding, OSM determined that due to site specific factors such as relatively flat terrain and sparse population in the coal producing areas, an exemption from the annual certifications and quarterly inspections of non-hazardous impoundments is acceptable in Illinois. The Director has determined that the same is true for Indiana. The Director finds the proposed State language no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(10) but, as with the Illinois approval, is requiring that Indiana use the criteria developed by OSM on September 7, 1990, as a guideline when reviewing exemption requests. In a letter dated August 21, 1996, (Administrative Record Number IND–1542), Indiana agreed to use this criteria when reviewing an exemption request under this rule.

In addition, the Director notes that Indiana's use of the term ''subsection'' in the phrase ''shall be exempt from the examination requirements of this subsection'' is incorrect. In the August 21, 1996, letter, Indiana stated that the correct term should be ''clause,'' and that it is the intention of the Indiana Division of Reclamation to apply 310 IAC 12–5–24/90(a)(9)(E) as the examination requirements that would be exempted by the proposed provisions. The Director is requiring that Indiana further amend 310 IAC 12–5–24/90(a)(9)(E) to clarify that the term ''subsection'' should be ''clause.''

The Federal regulations at 30 CFR 816/817.49 concerning impoundments were revised on October 20, 1994 (59 FR 53022). Most of the changes to the Federal provisions are related to the incorporation by reference of certain criteria in ''Earth Dams and Reservoirs,'' SCS publication TR–60, 1985. Specifically, the criteria referenced in TR–60 require impoundments meeting SCS Class B and C criteria in TR–60 to meet the same stability, spillway, foundation investigation, freeboard, hydrograph, inspection, and examination requirements as impoundments meeting the MSHA criteria in 30 CFR 77.216(a). In a future 30 CFR Part 732 letter, OSM will notify Indiana of the additional revisions to sections 310 IAC 12–5–24/90 that are necessary to be no less effective than the revised Federal regulations discussed above.

6. *310 IAC 12–5–69.5/137.5 Surface mining; primary roads.*

The Director finds the proposed amendments to be substantively identical to the counterpart Federal regulations at 30 CFR 816/817.151, with the following exceptions.

The proposed language at subsections 69.5(2) (A) and (B)/137.5(2) allow a minimum static safety factor of 1.3, ''or'' a maximum slope not in excess of 3h:1v. The proposed option of either the 1.3 static safety factor or a maximum slope of 3h:1v is less effective than the counterpart federal regulations, because a 3h:1v slope isn't automatically equivalent to a 1.3 static safety factor. Therefore, the Director is approving the proposed provisions except to the extent that the provisions allow the use of a maximum slope of 3h:1v as an alternative to the 1.3 static safety factor requirement. In addition, Indiana must remove from 310 IAC 12–5–69.5/137.5(2) the language that allows the use of a maximum slope of 3h:1v as an alternative to the 1.3 static safety factor requirement or propose engineering design standards for a slope of 3h:1v that ensure compliance with the minimum static safety factor of 1.3.

Indiana also proposed engineering design standards at subsection 69.5(2)(C) for surface mining primary roads, which allow the use of a maximum slope of 2h.1v, as an alternative to the 1.3 static safety factor requirement. The Federal regulations at 30 CFR 780.37(c) and 784.24(c) allow regulatory authorities to establish engineering design standards for primary roads in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3. OSM conducted a technical review of the proposed design standard and found them to be acceptable. Therefore, the Director is approving Indiana's alternative design standards at 310 IAC 12–5–69.5(2)(C).

IV. Summary and Disposition of Comments

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. The U.S. Fish and Wildlife Service (FWS) responded (Administrative record Number IND–1411) supporting the amendments because ''they generally provide a higher level of reporting, monitoring, and remediation regarding water quality and quantity.'' The FWS also had the following specific comments.

FWS recommended that 310 IAC 12–3–47(c)(2)(C), concerning adverse effects of mining on underground or surface water, be amended by adding to the list of ''legitimate purposes'' to include aquatic ecosystems. In response, the Director notes that the proposed language is identical to the counterpart Federal language 30 CFR 780.21(f)(3)(iii). In addition, the ''legitimate purposes'' referred to in the provision applies to human use of water supplies (e.g., domestic, agricultural), and, therefore, aquatic ecosystems would be an inappropriate addition to the list.

FWS recommended that 310 IAC–12–5–21(b)(1) be amended to add that siltation structures be located out of forested intermittent streams and forested wetlands as well as out of perennial streams. In response, the Director notes that the amended language is substantively identical to the counterpart Federal regulations at 30 CFR 816.46(c)(ii).

FWS recommended that 310 IAC 12–5–69(b)(6) be amended to require that flow alterations be ''minimal'' in accordance with best available technology. In response, the Director notes that the proposed language is identical to the counterpart Federal language at 30 CFR 816.150(b)(5).

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded that their review revealed no impact to NRCS programs. However, the NRCS had the following questions.

The NRCS stated that if Indiana doesn't authorize professional land surveyors to certify construction, then the phrase ''or qualified registered professional land surveyor'' should be removed from 310 IAC 12–5–21(a)(3). In response, the Director notes that as discussed above in Finding 4, Indiana does not authorize land surveyors to certify impoundment designs. Therefore, Indiana's proposed authorization to allow land surveyors to inspect and certify impoundments is less effective than the Federal regulations at 30 CFR 816/817.49(a)(11)(iv) and cannot be approved.

The NRCS stated that 310 IAC 12–5–24/90(a)(9) and (a)(9)(B) appear contradictory because the introductory paragraph at (a)(9) refers only to professional engineers, while (a)(9)(B) refers to both engineers and surveyors. In response, the Director notes that as discussed above in Finding 5, Indiana does not authorize land surveyors to certify impoundment designs. Therefore, Indiana's proposed authorization to allow land surveyors to inspect and certify impoundments is less effective than the Federal regulations at 30 CFR 816/817.49(a)(11)(iv) and cannot be approved.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the October 20, 1994, Federal Register (59 FR 52943). The comment period closed on November 21, 1994. No comments were received, and no one requested a hearing, so the scheduled hearing was not held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA on October 3, 1994 (Administrative Record Number IND–1404). EPA responded on October 18, 1994 (Administrative Record Number IND–1410). EPA stated that it found the document (amendment #94–5) acceptable.

V. Director's Decision

Based on the above findings, the Director is approving amendment #94–5 submitted by Indiana on September 26, 1994, except as noted below.

The Director is approving 310 IAC 12–5–21/87(a)(3) except to the extent that the provisions authorize land surveyors to inspect and certify the construction of siltation structures, and he is requiring Indiana to remove the disapprove language and to notify OSM when the removal is completed.

The Director is approving 310 IAC 12–5–24/90(a)(9)(B) except to the extent that the provisions authorize land surveyors to inspect and certify impoundments, and he is requiring Indiana to remove the disapproved language and to notify OSM when the removal is completed.

The Director is approving 310 IAC 12–5–69.5/137.5(2) except to the extent that the provisions allow the use of a maximum slope of 3h:1v without providing engineering design standards that ensure compliance with the minimum static safety factor of 1.3. He is also requiring that Indiana remove the disapproved language and notify OSM when the removal is completed or proposed engineering design standards for a slope of 3h:1v that ensure compliance with the 1.3 minimum static safety factor requirement.

In addition, the State's subsections 310 IAC 12–3–49/83(e)(3) should be amended to add the requirement concerning stability analysis of each structure as required by 30 CFR 780.25 and 784.16 subsection (f).

The Director is requiring that 310 IAC 12–3–127(c)(4), introductory paragraph, be amended to include the phrase ''or by any person who owns or controls the applicant'' after the word ''applicant'' in line 3, and the phrase ''or person who owns or controls the applicant'' after the word ''applicant'' in line 7.

The Director is requiring that Indiana further amend 310 IAC 12–5–24/90(a)(9)(E) to clarify that the term ''subsection'' should be ''clause.''

The Director's approval herein of the proposed amendment has satisfied certain required amendments codified at 30 CFR 914.16. Therefore, the Director is removing the following required program amendments: 30 CFR 914.16 (o), (q), (r), (t), (u), (v), (w), (x), (y), (z), and (aa).

The Federal regulations at 30 CFR Parts 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.

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. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

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 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.

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 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1996

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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 by adding paragraph (rrr) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(rrr) With the exceptions noted below, the amendments submitted by Indiana on September 26, 1994, and revised on August 16, 1995, are approved effective October 29, 1996:

The Director is approving 310 IAC 12–5–21/87(a)(3) except to the extent that the provisions authorize land surveyors to inspect and certify the construction of siltation structures.

The Director is approving 310 IAC 12–5–24/90(a)(9)(B) except to the extent that the provisions authorize land surveyors to inspect and certify impoundments.

The Director is approving 310 IAC 12–5–69, 5/137.5(2) except to the extent that the provisions allow the use of a maximum slope of 3h:1v without providing engineering design standards that ensure compliance with the minimum static safety factor of 1.3.

3. Section 914.16 is amended by removing and reserving paragraphs (o), (q), (r), (t), (u), (v), (w), (x), (y), (z), and (aa); and adding paragraph (ii) to read as follows:

§ 914.16 Required program amendments.

* * * * *

(ii) By April 28, 1997, Indiana shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to address the following:

a. Amend the Indiana program at 310 IAC 12–3–49/83(e)(3) to add the requirement concerning stability analysis of each structure as is required by 30 CFR 780.25(f) and 784.16(f).

b. Amend 310 IAC 12–3–127(c)(4), introductory paragraph, to include the phrase ''or by any person who owns or controls the applicant'' after the word ''applicant'' in line 3, and the phrase ''or person who owns or controls the applicant'' after the word ''applicant'' in line 7.

c. The Director is requiring that Indiana further amend 310 IAC 12–5–24/90(a)(9)(E) to clarify that the term ''subsection'' should be ''clause.''

[FR Doc. 96–27599 Filed 10–28–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

[OH–237; Amendment Number 71]

Ohio 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 Ohio regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to rules pertaining to inspections. The amendment is intended to make the Ohio program consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 29, 1996.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio 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 Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated May 17, 1996, (Administrative Record No. OH–2165–00) Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Ohio proposed to revise Ohio Administrative Code (OAC) section 1501:13–14–01 by deleting that portion of the rule pertaining to bond reduction; adding language to treat portions of operations as inactive where reclamation phase II is performed; and to delete a reference to permits other than permanent program ''D'' permits. In a subsequent letter dated September 3, 1996,