and by adding in their place the words ''initial importer'' and ''initial importers'', respectively.

Dated: July 15, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–25796 Filed 9–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–131–FOR; State Program Amendment No. 95–13]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an 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 to regulations pertaining to the definition of ''affected area,'' submittal of underground mining operation plans, and the standards for prime farmland restoration by surface and underground coal mining operations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: 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. Internet: agilmore@osmre.gov.

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 March 6, 1998 (Administrative Record No. IND–1597), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to the required program amendment at 30 CFR 914.16(n), 914.16(p), and 914.16(gg) and at its own initiative.

OSM announced receipt of the proposed amendment in the April 6, 1998, **Federal Register** (63 FR 16725), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 6, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified a concern relating to a technical error at 310 IAC 12–3–78(a)(2), underground mining and postmining land use. Also, at 310 IAC 12–0.5–6, definition of ''affected area,'' OSM identified a concern relating to the exemption criteria in subsection (b). OSM notified Indiana of these concerns by letter dated July 1, 1998 (Administrative Record No. IND–1616).

By letter dated July 17, 1998 (Administrative Record No. IND–1618), Indiana responded to OSM's concerns by stating that the editorial error at 310 IAC 12–3–78(a)(2) would be corrected as an errata. Indiana also provided clarification that all the criteria at 310 IAC 12–0.5–6(b) will be used to determine if a road is exempt from the definition of ''affected area.'' Because no substantive revisions were made to the amendment, OSM did not reopen the public 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.

1. *310 IAC 12–0.5–6(a).* Indiana amended 310 IAC 12–0.5–6(a) by replacing the terms ''an'' and ''a'' with the term ''any'' to refer to sites and areas which would be considered ''affected areas.'' This is consistent with the use of the term ''any'' in the counterpart Federal definition of ''affected area'' at 30 CFR 701.5. The Director finds that the revisions satisfy the requirement placed on the Indiana program at 30 CFR 914.16(n) and that Indiana's revised language at 310 IAC 12–0.5–6(a) is no less effective than language found at 30 CFR 701.5. Therefore, the Director is approving the revisions and removing the required amendment.

2. *310 IAC 12–0.5–6(b) and (c).* Indiana added language at 310 IAC 12–0.5–6(b) identifying the criteria for exemption of roads included in the affected area. Subsection (b)(1) requires that the road be ''designated as a public road pursuant to the laws of the jurisdiction in which it is located.'' Subsection (b)(2) requires that the road be ''maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction.'' Subsection (b)(3) requires that the road has ''substantial (more than incidental) public use.'' Subsection (b)(4) requires that ''the extent and the effect of mining-related uses of the road by the permittee does not warrant regulation as part of the surface coal mining and reclamation operation.'' Subsection (c) requires the director to determine on a case-by-case basis whether a road satisfies the requirements at 310 IAC 12–0.5–6(b) based on the mining related use of the road and consistent with Indiana's definition of ''surface coal mining operations.''

The language at subsections (b)(1), (b)(2), and (b)(3) is substantively the same as language found in the Federal definition at 30 CFR 701.5. OSM suspended its definition of ''affected area'' at 30 CFR 701.5 insofar as it might limit jurisdiction over roads covered by the definition of ''surface coal mining operations'' (51 FR 41952, November 20, 1986). OSM's revised road rules were published on November 8, 1988, 53 FR 45192. In finalizing those rules, OSM declined to add a reference to ''affected area'' to the definition of road on the basis that the definition of ''affected area'' as partially suspended no longer provides additional guidance as to which roads are included in the definition of surface coal mining operations. At the same time, OSM declined to expressly exclude public roads from the definition of road. The preamble stated that OSM is concerned that roads constructed to serve mining operations not avoid compliance with performance standards by being deeded to public entities, but it was not OSM's intent to automatically extend

jurisdiction into the existing public road network. Instead, jurisdiction decisions are to be made by the regulatory authorities on a case-by-case basis. Indiana intends to continue to use the definition of ''affected area'' in determining which roads are subject to jurisdiction. The provisions at 310 IAC 12–0.5–6(b)(4) and (c) clarify when a public road will be regulated and adequately addresses the concerns OSM expressed in the November 8, 1988, preamble (53 FR 45192) regarding public roads. The Director finds that Indiana's definition of ''affected area'' is no less effective than the Federal regulations concerning jurisdiction over public roads and is consistent with the Federal definition of ''affected area.'' Therefore, the Director is approving 310 IAC 12–0.5–6(b) and (c).

3. *310 IAC 12–3–78(a).* Indiana amended 310 IAC 12–3–78(a) to require underground permit applications to ''contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC–14–34 can be accomplished by the applicant.'' Subdivisions (1) and (2) of 310 IAC 12–3–78(a) outline the minimum elements of the required description. The Director finds that the language at 310 IAC 12–3–78(a) is substantively the same as that found at 30 CFR 784.11. Therefore, the Director approves the amendment.

4. *310 IAC 12–3–78(b).* Indiana added language at 310 IAC 12–3–78(b) requiring applicants for underground coal mining and reclamation permits to submit descriptions, plans, and drawings for all support facilities within the proposed permit area. The Director finds that Indiana's language at 301 IAC 12–0.5–6(a) is substantively the same as the Federal language found at 30 CFR 784.30. Therefore, the Director approves the amendment.

5. *310 IAC 12–5–98(d)(1).* Indiana added language at 310 IAC 12–5–98(d)(1) that requires the soil profile be determined by the U.S. Soil Conservation Service. The Director finds that the revision satisfies the requirement placed on the Indiana program at 30 CFR 914.16(p), and that Indiana's revised language at 301 IAC 12–5–98(d)(1) is no less effective than the Federal language at 30 CFR 785.15(c)(1)(ii). Therefore, the Director is approving the revision and removing the required amendment.

6. *310 IAC 12–5–145.5.* Indiana added a provision at 310 IAC 12–5–145.5 to require the director to use ''any prime farmland soil-reconstruction specifications promulgated as rules by the United States Soil Conservation Service for Indiana'' in order to carry out his or her responsibilities under 310 IAC 12–3–98 and 310 IAC 12–4. The Director finds that this provision satisfies the requirement placed on the Indiana program at 30 CFR 914.16(gg) and that Indiana's requirement at 301 IAC 12–5–145.5 is no less effective than the Federal language at 30 CFR 823.4. Therefore, the Director is approving Indiana's rule and removing the required amendment.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment. By letter dated April 30, 1998 (Administrative Record No. IND–1605), the Indiana Coal Council (ICC) responded that while the Federal regulation at 30 CFR 823.4 does not state that the regulatory authority may use any promulgated United States Soil Conservation Service prime farmland soil-reconstruction specifications as rules, the language at 310 IAC 12–5–145.5 is still not substantively different from the Federal rule. ICC points out that a U.S. District Court for the District of Columbia ruled that the SCS soil reconstruction specifications required by SMCRA qualify as rules and therefore must be subject to public review. Further, the Court noted that OSM agreed and advised SCS to publish its proposed standards for public review. ''Therefore the effect of the additional language in the proposed Indiana rule is simply to conform the substance of the rule to the Federal rule as interpreted by the Office of Surface Mining and the courts.'' ICC believes the amendment should be approved.

OSM agrees that the language at 310 IAC 12–5–145.5 conforms to the judicial and agency interpretation of 30 CFR 823.4. Furthermore, the language used at 310 IAC 12–5–145.5 is identical to the language required at 30 CFR 914.16(gg). The Director is approving the revision.

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. By letter dated April 17, 1998 (Administrative Record No. IND–1604), the U.S. Fish and Wildlife Service responded that it has no comments on IN–131–FOR.

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 the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. 1600). The 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. 1600). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the amendment as submitted by Indiana on March 6, 1998.

The Director approves the regulations as proposed by Indiana with the provision that they be fully promulgated in identical form to the regulations 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

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1998.

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
*	*	*
March 6, 1998	September 29, 1998	310 IAC 12–0.5–6(a) through (c); 12–3–78(a) and (b); 12–5–98(a), (c) and (d); and 12–5–145.5.

3. Section 914.16 is amended by removing and reserving paragraphs (n), (p), and (gg).

[FR Doc. 98–25979 Filed 9–28–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–218–FOR; Amendment Number 61]

Ohio Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Ohio regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment provides that areas reclaimed following the removal of temporary structures that are part of the sediment control system, such as sedimentation ponds and diversions, are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. The amendment also authorizes as a husbandry practice, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed, that does not restart the revegetation responsibility period. The amendment is intended to improve operational efficiency of the Ohio program.

EFFECTIVE DATE: September 29, 1998.

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