be expressed as 1/8, 1/4, 1/2, 3/4, 1, or 2 teaspoons.

* * * * *

3. Section 101.12 is amended in paragraph (b), in Table 2, under the ''Product category'' column, under ''Miscellaneous category'' by revising the entry for ''Baking powder, baking soda, pectin'' to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1, 2, 3, 4]

Product category	Reference amount	Label statement[5]
* * * * *	*	*
Miscellaneous Category:		
Baking powder, baking soda, pectin	0.6g	__tsp (__g)
* * * * *	*	*

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; fresh and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term ''piece'' is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

* * * * *

Dated: March 9, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6299 Filed 3–15–99; 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–144–FOR]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, 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 and additions of statutes pertaining to other State and Federal laws and permit revisions. Indiana intends to revise its program to incorporate the additional flexibility afforded by SMCRA and to provide the guidelines for permit revisions, including incidental boundary revisions.

EFFECTIVE DATE: March 16, 1999.

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: INFOMAIL@indgw.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. 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 concerning the conditions of approval and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated May 14, 1998 (Administrative Record No. IND–1606), Indiana sent us an amendment to its program under SMCRA. The amendment concerns revisions to IC 14–8 and several sections of IC 14–34 made by the Indiana House Enrolled Act No. 1074. Indiana sent the amendment at its own initiative.

We announced receipt of the amendment in the May 29, 1998, **Federal Register** (63 FR 29365). 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 June 29, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to IC 14–34–4–18, Permit Conditions; IC 14–34–5–7, Definition of Permit Revision; IC 14–34–5–8.2, Nonsignificant Permit Revisions; and IC 14–34–5–8.4, Minor Field Revisions. We notified Indiana of these concerns by letter dated September 15, 1998 (Administrative Record No. IND–1621).

Indiana responded to our concerns by letter dated December 21, 1998. Included with Indiana's response letter was a letter sent by Indiana to the Indiana Coal Council, Inc. (ICC) and a

letter from the ICC to Indiana (Administrative Record No. IND–1627). We will discuss the State's response to our concerns in the Director's Findings below.

In its letter to Indiana, the ICC commented that Indiana House Enrolled Act No. 1074 is the law of the State of Indiana and is legally binding regardless of OSM's approval or disapproval unless and until such time as OSM may undertake action to pre-empt it under 30 CFR 730.11(a). We disagree with the ICC's comment. Provisions at 30 CFR 732.17 detail the procedures for approving a State program amendment. Paragraph (g) requires a State to submit to OSM any proposed changes to the laws or regulations that make up an approved program as an amendment. Further, paragraph (g) provides that ''no such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.'' Thus, as a matter of law, the various provisions of House Enrolled Act No. 1074 cannot be implemented as part of Indiana's regulatory program until we approve them. Further, any provisions which are disapproved cannot be implemented as part of a State regulatory program under SMCRA. Therefore, we are proceeding with this final rule under the authority of 30 CFR 732.17(g).

III. Director's Findings

Set forth below, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

1. IC 14–8–2–117.3, Definition for ''Governmental Entity''

This section defines ''governmental entity.'' There is no Federal counterpart to this definition, and it is not used elsewhere in the approved program. Indiana apparently included it because of the use of the term in related programs. We approve the definition because it is not inconsistent with any requirements of SMCRA and it has no effect on the Indiana program.

2. IC 14–34–4–18, Permit Conditions

Indiana added new subsection (b) to this section to allow the director to condition a permit to require that a permittee obtain or maintain in force other licences or permits required for surface coal mining and reclamation operations. However, these conditions do not authorize or require the director to administer or enforce the requirements of any Federal or State law other than this article.

We interpret this provision to mean that any such condition would make the permit dependent upon a permittee obtaining and maintaining in force other required licenses or permits and that the director would enforce such conditions. We also interpret this provision to mean that the director will continue to administer and enforce all requirements of the approved program including those incorporated through cross references, such as Mine Safety and Health Administration (MSHA) dam safety requirements and Environmental Protection Agency (EPA) effluent limits. In its letter dated December 21, 1998, Indiana confirmed that it would interpret the above provision in a manner consistent with our interpretation.

We approve IC 14–34–5–18(b), as clarified by the above interpretation, because it provides additional assurance that the regulatory authority will be able to comply with the provisions of SMCRA found in section 503(a)(6), which requires the approved State Program to establish, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation. Thus, we find IC 14–34–5–18(b) is no less stringent than section 503(a)(6) of SMCRA.

3. IC 14–34–5–7, Permit Revisions

a. *IC 14–34–5–7(a).* Indiana revised subsection (a) to define a permit revision as a change in mining or reclamation operations from the approved mining and reclamation plans that adversely affects the permittee's compliance with the State's statutes and regulations. Such permit revisions are subject to review and approval as provided in this section and sections 8 through 8.4 of IC 14–34–5.

The above statute would essentially create two categories of changes in mining and reclamation operations: those that affect the permittee's ability to comply with the State's statutes and regulations; and those that do not affect the permittee's ability to comply with the State's statutes and regulations. Only those changes that affect the permittee's ability to comply with the State's statutes and regulations are required to undergo regulatory review and approval. Other changes do not have to undergo regulatory review and approval.

The above statute has three problems. First, it is inconsistent with 30 CFR 773.17(b), which require that a permittee conduct only those mining and reclamation operations detailed in the approved mining and reclamation plan. The above statute would allow a permittee to make a change in mining and reclamation operations without notifying the regulatory authority and obtaining its approval. Thus, under IC 14–34–5–7(a), the permittee may conduct mining and reclamation operations that deviate from the approved mining and reclamation plan. Clearly, this is inconsistent with 30 CFR 773.17(b).

Further, the above statute is inconsistent with our interpretation of a permit revision. As stated in the preamble of a September 28, 1983, final rule, ''all revisions must be approved and incorporated into the permit since they are changes to that document'' (48 FR 44377).

Thus, all changes to the approved mining and reclamation plan are permit revisions subject regulatory authority review and approval. IC 14–34–5–7(a) would limit permit revisions to only those changes in the mining and reclamation operations that adversely affects the permittee's ability to comply with the State's statutes and regulations. Clearly, this is inconsistent with our interpretation of a permit revision.

Finally, the above statute would allow the permittee to determine whether a change is a permit revision that adversely affects his or her ability to comply with the State's laws and regulations. Thus, only after a permittee determines that a proposed change adversely affects his or her compliance will he or she submit it to the regulatory authority for review and approval. This is inconsistent with section 511(a)(2) of SMCRA, which requires the regulatory authority to determine the scale or extent of a revision request for which all permit application information requirements and procedures apply.

In its December 21, 1998, letter, Indiana responded to our concerns about IC 14–34–5–7(a) by stating that it interprets the statutory reference to IC 14–34–5–8 through 8.4 to mean that the director or his designee is the only person authorized to determine whether a proposed change is significant or nonsignificant. The permit applicant does not make the determination.

We agree that the director or his designee is the only person authorized to determine whether a proposed change is significant or nonsignificant. However, the distinction between significant and nonsignificant revisions is not at issue. At issue is who determines whether changes in the mining and reclamation operation require regulatory review and approval at all. IC 14–34–5–7(a) leaves the

determination of whether a change requires review and approval in the hands of the permittee. The director or his designee cannot determine whether a proposed change is significant or nonsignificant if the permittee does not submit it for review. Under IC 14–34–5–7(a), the permittee would first determine that a proposed change adversely affects his or her compliance, and then submit it to the regulatory authority for review and approval. As stated above, this provision is inconsistent with section 511(a)(2) of SMCRA, which requires the regulatory authority to determine the scale or extent of a revision request for which all permit application information requirements and procedures apply.

Even if IC 14–34–5–7(a) is interpreted to mean that the director or his designee is the only person authorized to determine if a proposed change adversely affected the permittees' ability to comply with the State's statutes and regulations, the provision is still inconsistent with our interpretation of permit revisions and 30 CFR 773.17(b). All changes to the approved mining and reclamation plan, regardless of their effect of the permittees' ability to comply with the State's statutes and regulations, are permit revisions that must be submitted to the regulatory authority for review and approval. Further, the permittee can conduct only those changes that are detailed in the approved mining and reclamation plan. Therefore, we do not approve IC 14–34–5–7(a).

b. *IC 14–34–5–7(b).* Indiana revised subsection (b) to establish three types of permit revisions: significant revisions with notice and hearing requirements; non-significant revisions without hearing and notice requirements; and minor field revisions. We approve subsection (b) because it is consistent with, and no less stringent than, section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

c. *IC 14–34–5–7(c).* Indiana added subsection (c) to provide that the director or his or her designated representative may approve permit revisions. We approve this provision because it is no less stringent than section 511(a)(2) of SMCRA, which requires the regulatory authority to approve permit revisions.

d. *IC 14–34–5–7(d).* Finally, Indiana added subsection (d) to provide that the regulatory authority may not approve a permit revision unless the director or his or her designated representative finds that reclamation can be accomplished, the applicable requirements of IC 14–34–4–7 are met, and the permit revision complies with all applicable requirements of the State's statutes and regulations. We approve this provision because it is consistent with, and no less stringent than, the Federal provisions at 511(a)(2) of SMCRA, which requires a regulatory authority to approve a permit revision only after it finds that reclamation can be accomplished under the revised reclamation plan.

4. IC 14–34–5–8, Permit Revisions

In this section, Indiana revised subsection (a) to require the regulatory authority to hold hearings and publish public notices for significant permit revisions, but not nonsignificant or minor field revisions. We approve this statute because it is consistent with, and no less stringent than, Section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

5. IC 14–34–5–8.1, Significant Permit Revisions

Indiana added this section to establish guidelines for determining whether a proposed revision is significant and, therefore, subject to Indiana's notice and hearing requirements. The statute provides eight specific examples of significant revisions. The examples are similar to those contained in the Federal program for Tennessee. We approve this statute because it is consistent with, and no less stringent than, Section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply. However, we advise Indiana that this list cannot be considered all inclusive, as there are many other changes not listed at IC 14–34–5–8.1 that would be considered significant revisions.

6. IC 14–34–5–8.2, Nonsignificant Permit Revisions

Indiana added this new section to establish guidelines for determining whether a proposed change to a permit is a nonsignificant revision. The statute provides five specific examples of nonsignificant revisions. Examples in sections 8.2(1), (2), (3), (5)(A), and (5)(B) are similar to examples approved in other State programs. Further, they are consistent with, and no less stringent than, section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply. Therefore, we approve sections 8.2(1), (2), (3), (5)(A), and (5)(B).

a. *IC 14–34–5–8.2(4).* Section 8.2(4) would allow the director to approve postmining land use changes other than residential, commercial or industrial, recreational, or developed water resources meeting MSHA requirements for a significant impoundment as nonsignificant revisions without notice and hearing requirements.

Section 511(a)(2) of SMCRA requires the State to establish guidelines for determining which revision requests are subject to notice and hearing requirements. However, it also requires, at a minimum, notice and hearing requirements for any significant alterations in a reclamation plan. IC 14–34–5–8.2(4) would allow many changes that could produce significant alterations in a reclamation plan, such as a change from cropland to forest, without notice and hearing requirements. Allowing such a change without notice and hearing requirements is inconsistent with, and less stringent than, section 511(a)(2) of SMCRA.

In its December 21, 1998, letter, Indiana stated that it interprets this section to mean that the director of the State regulatory authority retains discretion under IC 14–34–5–8.2(5) to determine whether land use changes other than those listed in IC 14–34–5–8.1(8) could be significant revisions. Indiana further stated that all permit revision decisions are appealable under the Indiana Administrative Orders and Procedures Act.

We agree that the director retains discretion as to whether a change is significant or nonsignificant. However, director discretion does not change the fact that the statute is inconsistent with section 511(a)(2) of SMCRA, which requires notice and hearing requirements for any significant alterations in a reclamation plan. Further, the fact that all permit revision decisions are appealable under the Indiana Administrative Orders and Procedures Act does not justify the inclusion of a provision in this section that is inconsistent with, and less stringent than, section 511(a)(2) of SMCRA. Finally, changes in postmining land use are the kind of issue that the public should have an opportunity to comment on. Therefore, we do not approve section 8.2(4).

b. *IC 14–34–5–8.2(5)(C).* Section 8.2(5)(C) would allow the director to

approve changes in the mining or reclamation plan necessitated by unanticipated and unusually adverse weather conditions, other Acts of God, strikes, or other causes beyond the reasonable control of the permittee as nonsignificant revisions without notice and hearing requirements if all of the steps specified by the director to maximize environmental protection are taken.

This provision is similar to the Illinois program provision found at 62 IAC 1774.13(b)(2)(F). However, it has one major difference. The Illinois program regulation provides that a permit revision is not significant if the revision is a temporary change necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee. The Indiana statute as written would allow those changes to be permanent. Many of the causes listed in this statute could result in major environmental impacts requiring permanent changes to mining and reclamation plans. If these changes are permanent in nature, they must go to public notice and hearing.

In its December 21, 1998, letter, Indiana responded to our concerns about this provision by stating that it interprets this section to mean that the director determines whether a change necessitated by causes beyond the reasonable control of the permittee is significant or insignificant. Because the causes listed in this section are by their nature temporary, the vast majority of permit revisions will be insignificant. Indiana pointed out that the provision at IC 14–34–5–8.3 reiterates that the director must review and approve revisions before implementation. Therefore, any permanent changes that the director determines to be significant revisions will be subject to public review before being approved as permanent.

We approve IC 14–34–5–8.2(5)(c) with the understanding that Indiana will interpret it to mean that temporary changes necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee will be approved as nonsignificant permit revisions. Permanent changes will be reviewed by the director, and the director will make a determination as to whether the change qualifies as significant or nonsignificant. Interpreted in this manner, we find that the above statute is consistent with, and no less stringent than, the provisions of section 511(a)(2) of SMCRA, which requires the State to establish guidelines for determining which revision requests are subject to notice and hearing requirements.

7. IC 14–34–5–8.3, Nonsignificant Permit Revisions

This section provides that before a nonsignificant permit revision can be implemented, the director must review and approve it. We approve this provision because it is consistent with, and no less stringent than, the requirements of section 511(a)(2) of SMCRA, which requires the regulatory authority to approve permit revisions.

8. IC 14–34–5–8.4, Minor Field Revisions

a. *IC 14–34–5–8.4(a), (b), and (c)(1).* Subsections 8.4(a), (b), and (c)(1) establish the guidelines for determining whether a proposed change to a permit is a minor field revision. Subsection (a) establishes that a minor field revision must not require technical review or design analysis and must be capable of being evaluated in the field by the director's designated delegate for compliance with the regulations of IC 14–34–5–7(d). Subsection (b) provides that field inspectors may approve minor field revisions on either an inspection report or a form signed in the field. Subsection (c)(1) provides that a minor field revision must be properly documented and separately filed.

We approve the provisions of the above statutes because they are similar to those approved in other State Programs and are no less stringent than the requirements of section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

b. *IC 14–34–5–8.4(c)(2).* Subsection (c)(2) provides twelve specific examples of minor field revisions. Because IC 14–34–5–8.4(a) defines a minor field revision as a change that does not require technical review or design analysis and is capable of being evaluated in the field by a designated delegate of the director, we approve the examples at subsection (c)(2)(A) through (J) and (L) because they are consistent with, and no less stringent than, section 511(a)(2), which requires the State to establish guidelines for determining which revision requests are subject to notice and hearing requirements.

However, we do not approve the provision at subsection (c)(2)(K) regarding temporary cessation of mining because it is not considered a permit revision under Federal regulations. Because temporary cessation of mining often has a significant effect on the mining and reclamation process and progress, specific Federal regulations were developed at 30 CFR 816.131 and 817.131. We find that cessation of mining cannot be considered under the permit revision regulations and therefore cannot be considered as either a minor field revision or a non-significant revision. Therefore, we do not approve the provision at IC 14–34–5–8.4(c)(2)(K).

9. IC 14–34–5–8.5, Permit Area Extensions

Indiana's added this section to provide that a permittee must apply for a new permit for an extension of the area covered by a permit, except for an incidental boundary revision. We approve the addition of this section because it is substantively identical to the Federal provisions at 511(a)(3) of SMCRA.

10. IC 14–34–5–8.6, Incidental Boundary Revisions

Indiana added this section to establish the scale and extent of incidental boundary revisions, provide guidance on the standards that must be met on any areas approved through the incidental boundary revision process, and describe the application and approval procedures. We approve the addition of this section because it is consistent with, and no less stringent than, section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

11. Revisions to Other State Statutes

Indiana included the following statute revisions in the amendment: IC 14–22–10–2; IC 14–22–10–2.5; and IC 14–27–7–4. We did not review these statute revisions because they concern other State laws and not Indiana's approved program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the proposed amendment. By telefax dated June 26, 1998 (Administrative No. IND–1617), the Indiana Coal Council, Inc. (ICC) commented that it supports all the program amendments proposed for IC 14–34. They also provided specific comments in support of IC 14–34–5–7(a), which defines a permit revision as a ''change in mining or reclamation operations from the approved plans that would adversely affect the permittee's compliance with this article.'' ICC

commented that SMCRA does not specifically define a permit revision or state that all mining or reclamation changes are revisions subject to regulatory authority approval. Furthermore, they contend that the Indiana program already has an approved regulation, 310 IAC 12–3–121(a), that does not require regulatory authority approval of all permit revisions. Thus, ICC believes that the statutory language found at IC 14–34–5–7(a) will not interfere with the proper implementation of the Indiana program because it excludes from the definition of permit revision only those changes that do not effect the permittee's compliance with SMCRA. They point out that such changes would have to be fairly insignificant and that no practical purpose would be served by subjecting them to the permit review and approval process. ICC contends that it would be ''arbitrary and capricious for OSM to disapprove this program amendment based on a perceived inconsistency with OSM's interpretation of what SMCRA 'envisions' if OSM is unable to identify a specific provision of SMCRA with which the amendment conflicts.''

We agree that SMCRA does not specifically define a permit revision. However, as stated in Finding No. 3a, we have established that all revisions must be approved and incorporated into the permit since they are changes to that document (48 FR 44377). The finding in this document is consistent with our September 28, 1983, final rule. Furthermore, while 310 IAC 12–3–121(a) requires permit revisions for significant changes in original mining or reclamation plans, it also specifically states that such changes are not limited to those changes which could result in the operator's inability to comply with the performance standards outlined in 310 IAC 12–5–1 through 310 IAC 12–5–158. Thus, IC 14–34–5–7(a) is inconsistent with the State program regulations at 310 IAC 12–3–121(a). Finally, it is entirely possible that a change to a reclamation plan would not adversely affect a permittee's ability to comply with the provisions of Article 34 of the Indiana Code or SMCRA, but still represent a significant change to the mining or reclamation plan. Thus, the definition found at IC 14–34–5–7(a) conflicts with Section 511(a)(2) of SMCRA, which requires that any significant alterations of a reclamation plan be subject to, at a minimum, notice and hearing requirements. As discussed in Finding No. 3a, we are not approving IC 14–34–5–7(a).

ICC commented that the category of permit revisions defined at IC 14–34–5–8.4, minor field revisions, has been employed for some time in the approved Kentucky state program. ICC pointed out that while Indiana Department of Natural Resources (IDNR) staff and the IDNR Commission have approved variants of the language located at IC 14–34–5–8.4, they were never finalized because of questions raised by the Indiana Attorney General about the need for a statutory change. ICC commented that defining minor field revisions and providing for their approval minimizes administrative burdens on the permittee and the regulatory authority. ICC strongly supports the idea of minor field revisions and the specific language found at IC 14–34–5–8.4, ''which was arrived at after lengthy discussions between regulators and industry to identify categories of revisions most suitable for field approval.'' The ICC believes that the minor field revisions approval process established at IC 14–34–5–8.4 is consistent with IDNR's efforts to centralize responsibility for permit areas in the field inspector.

ICC also commented that the language at IC 14–34–5–8.4(a) clearly limits the approval of minor field revisions to those that meet the conditions set forth in IC 14–34–5–8.4(a)(1) and (2). Thus, ICC contends that the fact that some of the categories of revisions identified at IC 14–34–5–8.4(c) may require technical review or design analysis is no basis for disapproval of the statute. ICC pointed out that pond design and drainage control measures do not usually require technical review or design analysis in Indiana. ICC stated that ''circumstances in the field require minor changes in the configuration of sediment ponds which are so obviously inconsequential that a cursory examination suffices to show that the modified design is as effective as the original design. * * * If IDNR inspectors are not competent enough to evaluate such changes in the field, then they would not be able to judge whether ponds conformed to approved designs in general.'' ICC commented that Kentucky program regulations provide for approval of some pond relocations and some drainage control measures as minor field revisions. Finally, ICC contends that any concern that IC 14–34–5–8.4(a) would be abused in practice is no basis for disapproval of the statute, as OSM conducts continuous oversight of approved State programs and has adequate resources for remedying defective state programs.

As stated in Finding No. 8b, we are approving the examples at subsection (c)(2)(A) through (J) and (L) because the provisions of IC 14–34–5–8.4(a) clearly define a permit revision as a change that does not require technical review or design analysis and is capable of being evaluated in the field by a designated delegate of the director. However, we are not approving the example at IC 14–34–5–8.4(c)(2)(K) concerning cessation of mining. As stated in Finding No. 8b, Federal regulations do not consider cessation of mining a permit revision.

ICC commented that incidental boundary revisions as defined at IC 14–34–5–8.6 are not a separate category of permit revisions, but rather fall into one of the three categories defined at IC 14–34–5–7(b). ICC commented that every incidental boundary revision will be either a nonsignificant revision or a minor field revision since one of the criteria for an incidental boundary revision is that the revision may not be a major revision. ICC stated that in practice, they do not anticipate incidental boundary revisions will ever qualify as a minor field revision. Therefore, incidental boundary revisions will be approved under the criteria for nonsignificant revisions. ICC commented that this corresponds to the current practice in Indiana. Thus, the statutory provision should be approved as submitted.

We realize it would be difficult to anticipate every change needed by a mining and reclamation operator and to categorize it as significant, insignificant, or a field revision. Even the same type of change can vary in size or scope to the degree that a single category would not be applicable. Further, we agree that in most cases an incidental boundary revision would qualify as an insignificant revision. However, we maintain that because the addition of area through an incidental boundary revision requires permit document modification, and may include areas with significant environmental resources, such changes cannot be approved as a minor field revision.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. By letter dated June 19, 1998 (Administrative Record No. IND–1615), the U.S. Fish and Wildlife Service (FWS) responded that the meaning of IC 14–34–4–18(b) is unclear and that they would like an analysis of how the wording would change the IDNR's role in the Copperbelly Watersnake Conservation Agreement.

Interpreted in the manner stated in Finding No. 2, IC 14–34–4–18(b) will provide additional assurance that the regulatory authority will be able to comply with the provisions of SMCRA

found in Section 503(a)(7) which requires the approved State program to establish for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation. This requirement will not have any affect on the IDNR's role in the Copperbelly Watersnake Conservation Agreement.

The FWS commented that the language at IC 14–34–5–8.2(5) does not identify who makes the determination that additional fish and wildlife impacts will occur. Further, the FWS commented that the wording at IC 14–34–5–8.1(8) and IC 14–34–5–8.2(4) does not clearly identify the threshold for determining whether a revision resulting in loss post-mining wildlife habitat is significant or not. The FWS recommends that the final rule should not result in fewer opportunities for the FWS to review post-mining land use changes.

IC 14–34–5–7(c) states that any permit revision may be approved by the director or the director's designated representative. Thus, the director or the director's designated representative would be responsible for determining whether the permit revision qualifies as a significant, nonsignificant, or minor field revision under the guidelines provided at IC 14–34–5–8.1 through IC 14–34–5–8.4.

All post-mining changes found at IC 14–34–5–8.1(8) are considered significant and can only be approved after the notice and hearing requirements of the state law have been fulfilled. We did not approve the language at IC 14–34–5–8.2(4). Further, we have advised the state that the list found at IC 14–34–5–8.1 cannot be considered all inclusive.

Finally, the FWS stated that in all appropriate sections, the rule should specifically state that a proposed change is not insignificant or incidental if it will result in new or additional impacts on endangered species or wetlands.

IC 14–34–5–8.1(5) provides that a proposed revision of a permit is significant if the changes result in an adverse impact on fish, wildlife, and related environmental values beyond that previously considered. Related environmental values include impacts on endangered species or wetlands. IC 14–34–5–8.1(5) requires that a permit revision be designated as significant if this condition exists. The inclusion of a specific statement in other related sections would be redundant and excessive.

Environmental Protection Agency (EPA)

Provisions at 30 CFR 732.17(h)(11)(ii) require us to get written agreement from 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 concern air or water quality standards. Therefore, we did not request the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from the EPA (Administrative Record No. 1609). The EPA did not respond to our request.

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

Provisions at 30 CFR 732.17(h)(4) require us to ask the SHPO and ACHP for comments on amendments which may have an effect on historic properties. On May 21, 1998, we requested comments on Indiana's amendment (Administrative Record No. 1609), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the proposed amendment as sent to us by Indiana on May 14, 1998, with the following exceptions:

We do not approve, as stated in Finding No. 3a, IC 14–34–5–7(a), concerning permit revisions; as stated in Finding No. 6a, IC 14–34–5–8.2(4), concerning postmining land use changes; and as stated in Finding No. 8b, IC 14–34–5–8.4(c)(2)(K), concerning minor field revisions.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to speed the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the Secretary approves its State program. Similarly, 30 CFR 732.17(a) requires the State regulatory authority to submit any alterations of an approved State program to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that OSM does not approve. In the oversight of the Indiana program, we will recognize only the statutes, regulations and other materials the Secretary and we approve, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review 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 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 under 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: February 24, 1999.

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
*	*	* * * * *
May 15, 1998	March 16, 1999	IC14–8–2–117.3, 14–34–4–18, 14–34–5–7(b) through (d), –8, –8.1, –8.2(1) through (3), –8.2(5)(A) through (5)(C), –8.3, –8.4(a) through (c)(1),–8.4(c)(2)(A) through (J) and (L), –8.5,–8.6.

3. Section 914.17 is added to read as follows:

§ 914.17 State regulatory program provisions and amendments disapproved.

(a) The amendment at Indiana Code 14–34–5–7(a) submitted on May 14, 1998, concerning permit revisions is hereby disapproved effective March 16, 1999.

(b) The amendment at Indiana Code 14–34–5–8.2(4) submitted by Indiana on May 14, 1998, concerning postmining land use changes is hereby disapproved effective March 16, 1999.

(c) The amendment at Indiana Code 14–34–5–8.4(c)(2)(K) submitted by Indiana on May 14, 1998, concerning minor field revisions of temporary cessation of mining is hereby disapproved effective March 16, 1999.

[FR Doc. 99–6350 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–035–FOR, Amendment No. XXV]

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). North Dakota proposed revisions to rules pertaining to a proposal to eliminate the requirement for companies to submit a copy of the Federal Coal Production and Reclamation Fee Report, changes to revegetation success standards, and a new rule on inspection frequency for inactive mines. The amendment revised the State program to improve operational efficiency.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: GPadgett@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 and 934.16.

II. Proposed Amendment

By letter dated August 29, 1997, North Dakota submitted a proposed amendment to its program (Amendment No. XXV, administrative record No. ND–Z–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 Administrative Code (NDAC) that North Dakota proposed to revise were: NDAC 69–05.2–13–01, concerning its coal production and reclamation fee report; NDAC 69–05.2–22–07, concerning revegetation success standards; and the addition of NDAC 69–05.2–28–18, concerning inspections of inactive surface coal mining operations.

OSM announced receipt of the proposed amendment in the September 17, 1997 **Federal Register** (62 FR 48807), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–Z–13). The public comment period ended at 4 p.m., m.d.t. on October 17, 1997.

During its review of the amendment, OSM identified concerns with NDAC 69–05.2–22–07.4.1, pertaining to the time frame for demonstrating revegetation success. OSM notified North Dakota of the concerns in a telephone conversation on March 11,