

the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review.

5. *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, the direct final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than \$100 million, adjusted for inflation, or increase expenditures by the private sector of more than \$100 million, adjusted for inflation.

6. *Federalism Statement*

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The direct final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the direct final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and, as such, have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, the Department amends chapter XXV, subchapter F, part 2550 of title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

**Authority:** 29 U.S.C. 1135 and Secretary of Labor's Order No. 6-2009, 74 FR § 21524 (May 7, 2009). Sec. 2550.401c-1 also issued under 29 U.S.C. 1101. Sec. 2550.404a-1 also issued under sec. 657, Pub. L. 107-16, 115 Stat. 38. Sections 2550.404c-1 and 2550.404c-5 also issued under 29 U.S.C. 1104. Sec. 2550.408b-1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.408b-19 also issued under sec. 611, Pub. L. 109-280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1. Sec. 2550.412-1 also issued under 29 U.S.C. 1112.

■ 2. Section 2550.408b-2 is amended by revising paragraph (c)(1)(ix)(F) to read as follows:

§ 2550.408b-2 General statutory exemption for services or office space.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ix) \* \* \*

(F) The notice required by paragraph (c)(1)(ix)(C) of this section shall be furnished to the U.S. Department of Labor electronically in accordance with instructions published by the Department; or may be sent to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, DC 20013; and

\* \* \* \* \*

Signed at Washington, DC, this 2nd day of July 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2012-17013 Filed 7-13-12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SATS No. IN-160-FOR; Docket ID: OSM-2011-0008]

Indiana Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving amendments to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed to revise its rules concerning ownership and control provisions, periods of liability, performance bond release, revegetation standards, underground mining explosives, and cessation orders, to be no less effective than the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

**DATES:** *Effective Date:* July 16, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226-6700.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Indiana Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Indiana program in the July 26, 1982, **Federal Register** (47 FR

32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

## II. Submission of the Amendment

By letter dated May 25, 2011 (Administrative Record No. IND-1756), Indiana sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment in response to a September 30, 2009, letter (Administrative Record No. IN-1755) we sent to Indiana in accordance with 30 CFR 732.17(c) concerning multiple changes to ownership and control requirements. Indiana also made changes to other sections of its regulations at its own initiative. Indiana proposed revisions to its Indiana Surface Mining Regulations found in Article 25, Coal Mining and Reclamation Operations. The specific sections of Article 25 in Indiana's amendment are discussed in Part III OSM's Findings. Indiana intends to revise its program to be no less effective than the Federal regulations and to improve operational efficiency.

We announced receipt of the proposed amendment in the July 11, 2011, **Federal Register** (76 FR 40649). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 10, 2011. We did not receive any public comments.

During our review of the amendment, we identified concerns in section 312 IAC 25-5-7(f) Period of liability. On August 29, 2011, we notified Indiana by phone (Administrative Record No. IND-1759) of an incorrect reference in subsection 25-5-7(f). On September 6, 2011, we held a conference call to address the discrepancy in this section (Administrative Record No. IND-1760). Indiana officials confirmed that this was an incorrect reference and that they would correct the discrepancy through an errata process. By letter dated September 8, 2011 (Administrative Record No. IND-1761), we received notice from Indiana stating that the errata process was completed and the citation had been corrected. We did not reopen the comment period following the errata process because the change Indiana made was a minor reference correction and was not substantive in nature.

Also during our review of the amendment, we identified concerns in section 312 IAC 25-5-16 Performance bond release; requirements. More

specifically, we had concerns with a portion of subsection (j)(2) relating to the phrase "an electronic or stenographic record shall be made unless waived by all parties." We notified Indiana of our concern by letter dated December 21, 2011 (Administrative Record No. IND-1762). Indiana responded by letter on January 5, 2012 (Administrative Record No. IND-1763), stating that they would not submit revisions to this subsection at this time and that we should proceed with processing the amendment. Therefore, we are proceeding with the final rule **Federal Register** document.

## III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with one exception as described below. Any revisions that we do not specifically discuss below concerning nonsubstantive wording or editorial changes can be found in the full text of the program amendment available at [www.regulations.gov](http://www.regulations.gov).

### A. Definitions: 312 IAC 25-1-10.5 Applicant/Violator System; 312 IAC 25-1-32.5 Control or Controller; 312 IAC 25-1-51.5 Federal Office of Surface Mining Applicant/Violator System Office; 312 IAC 25-1-75.1 Knowing or Knowingly; and 312 IAC 25-1-48 Excess Spoil

Indiana proposed new definitions at sections 312 IAC 25-1-10.5, 312 IAC 25-1-32.5, 312 IAC 25-1-51.5, and 312 IAC 25-1-75.1; and revised its definition at section 312 IAC 25-1-48. We find that the new definitions at 25-1-10.5, 25-1-32.5, and 25-1-75.1, along with the revised definition at 25-1-48, are substantively the same as counterpart Federal regulations at 30 CFR 701.5. Additionally, we find that there is no Federal counterpart to the new definition proposed in section 25-1-51.5 for the Federal Office of Surface Mining Applicant/Violator System Office. This new definition accurately represents the organizational structure of OSM's Applicant/Violator System Office and makes Indiana's regulations no less effective than the Federal regulations. Therefore, we approve these changes.

### B. 312 IAC 25-4-18 Surface Mining Permit Applications, Compliance Information; and 312 IAC 25-4-59 Underground Mining Permit Applications, Compliance Information

Indiana proposed to amend these sections to require a review of

compliance history reports from the applicant/violator system for both surface and underground mining no more than (5) five days prior to permit issuance. The changes to both sections also specify that the Director will rely upon the violation information supplied by the applicant, a report from the applicant/violator system, and any other available information to review compliance history. Indiana's revisions are counterpart to the Federal regulations at 30 CFR 773.11, 773.12(c), and 778.14. We find that these revisions allow Indiana to meet the Federal requirement that a permit review includes a review of compliance history, thereby making Indiana's regulations no less effective than the counterpart Federal regulations. Therefore, we approve these changes.

### C. 312 IAC 25-4-23 Surface Mining Permit Applications, Identification of Other Safety and Environmental Licenses and Permits; and 312 IAC 25-4-64 Underground Mining Permit Application; Legal and Financial Information, Identification of Other Licenses and Permits

Indiana is repealing sections 25-4-23 and 25-4-64 to match the repeals made to 30 CFR 778.19 and 782.19 on September 28, 1983, **Federal Register** (48 FR 44390). We find that since OSM repealed these Federal regulations, Indiana's deletion of these sections are not inconsistent with the requirements of SMCRA or the Federal regulations and Indiana's regulations will remain no less effective than the Federal regulations. Therefore, we are approving their removal.

### D. 312 IAC 25-4-115.1 Post Permit Issuance Information Requirements

Indiana proposed a new subsection 25-4-115.1 requiring the permittee to notify and provide information to Indiana within 60 days of any changes regarding owners or controllers. We find that Indiana's new subsection 25-4-115.1 is substantively the same as the counterpart Federal regulations at 30 CFR 774.12(c). Therefore, we approve these changes.

### E. 312 IAC 25-4-122.1 Review of Director's Ownership or Control Listing or Finding; 312 IAC 25-4-122.2 Burden of Proof for Ownership or Control Challenges; and 312 IAC 25-4-122.3 Written Agency Decision on Challenges to Ownership or Control

Indiana proposed new subsections 25-4-122.1, 25-4-122.2, and 25-4-122.3 to add provisions for challenging an ownership or control determination; outline evidence necessary for the

permittee to submit during ownership or control challenges; and outline duties of the department regarding written decisions as a result of an ownership or control challenge. Indiana's new subsection 25-4-122.1 provides measures regarding the challenge of ownership and control listing or findings that are comparable to the Federal regulations by providing the same opportunities and procedures for challenges. We find that these changes make Indiana's regulations no less effective than the counterpart Federal regulations at 30 CFR 773.25 and 773.26. We also find that Indiana's new subsections 25-4-122.2 and 25-4-122.3 are substantively the same as their counterpart Federal regulations at 30 CFR 773.27 and 773.28. Therefore, we approve Indiana's changes to these three subsections.

*F. 312 IAC 25-4-127 Permit Reviews, Revisions, Renewals, and Transfer, Sale, or Assignment of Rights Granted Under Permits, Permit Revisions*

Indiana proposed to revise section 25-4-127 to clarify various requirements for permit revisions including adding definitions and requirements for significant revisions, nonsignificant revisions, and minor field revisions. These changes allow Indiana's regulations to fully meet the requirements of the counterpart Federal regulations at 30 CFR 774.13 and 774.15 for permit renewals and revisions while adding clarity. We find that these changes make Indiana's regulations no less effective than the Federal regulations; therefore, we approve them.

*G. 312 IAC 25-5-7 Period of Liability*

Indiana proposed new paragraph 312 IAC 25-5-7(f) to clarify the bond liability period for alternative postmine land uses beyond the control of the permittee. We find that Indiana's paragraph 25-5-7(f), after correction through the errata process described in Part II Submission of the Amendment, is substantively the same as the counterpart Federal regulations at 30 CFR 800.13(d)(2). Therefore, we approve this new paragraph.

*H. 312 IAC 25-5-16 Performance Bond Release; Requirements*

1. Indiana previously submitted an amendment regarding section 312 IAC 25-5-16 on December 11, 2006. In a letter dated May 9, 2007 (Administrative Record No. IND-1748), we notified Indiana that paragraphs (d) through (j) contained deficiencies, inappropriate reference citations, and the removal and/or absence of required program provisions that made Indiana's rules

less effective than the Federal regulations. In the **Federal Register** (72 FR 59005) we announced that we did not approve Indiana's proposed revisions at section 312 IAC 25-5-16 new paragraphs (d) through (j). This non-approval was inadvertently not codified in that **Federal Register** notice. As such, we are including this historical information and are codifying it in 30 CFR 914.17. Indiana has now submitted new changes to this section.

2. In this current amendment, Indiana proposed new language in paragraph (d) adding additional provisions clarifying that Indiana will notify interested parties of its decisions regarding performance bond releases within 60 days when no public hearing or informal conference is held, or within 30 days after a public hearing or informal conference is held. The counterpart Federal regulation at 30 CFR 800.40(b)(2) does not include a reference to informal conferences. The Federal regulations at 30 CFR 800.40(h) allow the regulatory authority to hold an informal conference to resolve written objections raised in § 800.40. Indiana's addition in 312 IAC 25-5-16(d) provides recognition that the time limitations apply regardless of whether a formal hearing or informal conference is held. We find that these additions make Indiana's regulations no less effective than the Federal regulations. Therefore, we approve the changes in this paragraph.

3. Indiana proposed new language in paragraph (i) that allows written objections or requests for public hearings to be resolved through an informal conference at the discretion of the Director and that informal conferences must be conducted within 30 days after the close of the comment period; allows for a waiver from the requirement for verbatim records of an informal conference if it is agreed upon by all parties involved in the conference; and requires that all parties involved in an informal conference be provided written findings of the conference stating the reasons for the findings. We find that Indiana's paragraph (i) contains all of the required portions of the counterpart Federal regulation at 30 CFR 800.40(h) and further clarifies the informal conference process. We also find that Indiana's changes make its regulations no less effective than the Federal regulations. Therefore, we approve the changes.

4. Indiana proposed to add a new paragraph (j) that contains five subparagraphs (j)(1)–(5). These require Indiana to hold a public hearing if written objections and requests for public hearings are not resolved through

an informal conference or if an informal conference is not held. These also include provisions regarding public notification, who will conduct the hearing, what information may be accepted, record collection, hearing location, findings, timeframe to hold a hearing, and conditions in which hearings may be cancelled. We find that paragraphs (j)(1), (3), (4), and (5) include all the required provisions of the counterpart Federal regulations at 30 CFR 800.40(f); further clarify the public hearing process; and make Indiana's regulations no less effective than the Federal regulations. Therefore, we approve these portions of (j).

Indiana's proposed subparagraph 312 IAC 25-5-16(j)(2) contains an unapprovable provision that makes this portion of Indiana's rules less effective than the Federal regulations. By letter dated December 21, 2011 (Administrative Record No. IND-1762), we contacted Indiana regarding the phrase, "an electronic or stenographic record shall be made unless waived by all parties." The addition of the phrase "unless waived by all parties" would make Indiana's regulations less effective than the counterpart Federal regulation at 30 CFR 800.40(g), which does not allow the waiver of any records in a public hearing. We suggested that Indiana remove this phrase to make this portion of its regulations no less effective than the Federal requirements. By letter dated January 5, 2012 (Administrative Record No. IND-1763), Indiana advised us that it would submit revisions to address these concerns at a later date and that we should proceed with processing the amendment. Therefore, we are approving subparagraph (j)(2) with the exception of the phrase "unless waived by all parties" related to public hearing records, which we are not approving.

5. Indiana proposed new paragraph (k) clarifying the department's authority in public hearings regarding bond releases and the requirement for a verbatim record of the hearing. We find that Indiana's new paragraph (k) is substantively the same as counterpart Federal regulations at 30 CFR 800.40(g). Therefore, we approve this paragraph.

6. Indiana proposed new paragraph (l) stating that the Director's decisions regarding bond releases are subject to administrative review under IC 4-21.5 and 312 IAC 3-1. We find that the new paragraph highlights and clarifies Indiana's existing review procedures and makes its regulations no less effective than the Federal regulations. Therefore, we are approving it.

*I. 312 IAC 25–6–59 Surface Mining, Revegetation, Standards for Success for Nonprime Farmland*

Indiana revised language in section 25–6–59 at paragraph (c)(4)(A) regarding alternative stocking rates and species for specific forest reclamation approaches. We find that Indiana's revised language allows more flexibility in its regulations regarding reforestation by allowing more site specific variations in species and stocking rates. We also find that these changes allow Indiana's regulations to meet the standards of, and be no less effective than, the counterpart Federal regulations at 30 CFR 816.116(b)(3) which require stocking and planting rates to be based on local and regional conditions. Therefore, we approve the changes.

*J. 312 IAC 25–6–93 Underground Mining, Explosives, General Requirements; 312 IAC 25–6–94 Underground Mining, Explosives, Preblasting Survey; and 312 IAC 25–6–95 Underground Mining, Explosives, Publication of Blasting Schedule*

Indiana added new language to 312 IAC 25–6–93 to clarify that this section's blasting regulations for slopes and shafts are not applicable for detonations at depths below 50 feet from the surface. This is counterpart to the Federal regulations at 30 CFR 817.61(a) that deal with surface blasting activities incident to underground coal mining. Indiana has clarified that 50 feet is the maximum depth below the surface in which surface blasting regulations would apply. Indiana also removed the requirement to submit a blast design for operations within 1,000 feet of a pipeline. The counterpart Federal regulation at 30 CFR 817.61(d)(1) does not contain this requirement. Indiana made some minor changes to 312 IAC 25–6–94 clarifying preblasting survey requirements and revised 312 IAC 25–6–95 regarding publication and distribution of blasting schedules. We find that Indiana's changes to these sections meet all the requirements of the counterpart Federal regulations at 30 CFR 817.61, 817.62, and 817.64 and make Indiana's regulations no less effective than the Federal regulations. Therefore, we approve these changes.

*K. 312 IAC 25–7–5 State Enforcement; Cessation Orders*

1. Indiana added new language in paragraph (k) clarifying that the timeframe for updating ownership and control listings following the issuance of a cessation order does not apply if a stay has been granted by an administrative law judge or a court of competent

jurisdiction and it remains in effect. We find that this language meets the requirements of the counterpart Federal regulation at 30 CFR 774.12(b) and makes Indiana's program no less effective than the Federal regulations. Therefore, we are approving the new language.

2. Indiana added new paragraph (m) requiring that any determinations made regarding a cessation order be in writing and contain a right of appeal. We find that the new language meets the requirements of 30 CFR 774.11(f) and (h) regarding notification and appeal rights for the entry of ownership and control information into the AVS system. Therefore, we find the addition of this new paragraph makes Indiana's regulation no less effective than the Federal regulations and we are approving it.

**IV. Summary and Disposition of Comments**

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

By letter dated June 14, 2011, under 30 CFR 732.17 (h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana's program (Administrative Record No. IN–1757). By letter dated July 13, 2011, we received a comment from the U.S. Fish and Wildlife Service (Administrative Record No. IN–1758), recommending that Indiana provide a definition or discussion regarding how the threshold of “adverse impact” is determined.

The Federal regulations require no such definition for “adverse impact.” The Federal regulations at 30 CFR 774.13(b)(2) require Indiana to establish guidelines related to the scale or extent of revisions for which certain permit application materials must be submitted. The Federal regulations at 30 CFR 773.15(j) require that the applicant demonstrate and the regulatory authority find in writing that the operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973.

By letter dated August 4, 2011, Indiana responded (Administrative Record No. IN–1761) to the U.S. Fish and Wildlife Service's comments, stating that Indiana has an embedded

Wildlife Biologist employed by the Indiana Department of Natural Resources, Fish and Wildlife Division, whose sole duties include the review of all surface and underground coal mine submissions relating to fish and wildlife and related environmental value resources. Indiana also stated that the intent of this part of the rule is to disallow a request for a nonsignificant permit revision if a change is proposed to a mine permit that could adversely affect these values in a way not contemplated beneath the currently approved permit. Indiana concluded by stating that the methodology it will employ regarding this topic will be the same that has been used since the inception of its corresponding statute, Indiana Code 14–34–5–8–1, which was passed in 1998 and approved by OSM in 1999.

We find that although Indiana has not defined the term “adverse impact” as the Fish and Wildlife Service suggested for the purposes of determining if a permit revision is “nonsignificant,” Indiana considers “adverse impact” as something not previously contemplated in the currently approved permit that could have an adverse effect. Indiana's implementation of the rules and regulations relating to fish and wildlife will not be conducted any differently than it has been since 1998. Indiana's intent of this section is consistent with that of the Federal regulations.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, by letter dated June 14, 2011, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IN–1757). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. By letter dated June 14, 2011, we requested comments on the

amendment (Administrative Record No. IN-1757); but neither responded to our request.

#### V. OSM's Decision

Based on our discussions in the above OSM's Findings, we are approving significant parts of Indiana's amendment sent to us on May 25, 2011. We do not approve the phrase "unless waived by all parties" contained in Indiana's proposed amendment to 312 IAC 25-5-16(j)(2). For those rules we approve, Indiana must fully promulgate them in identical form to the rules submitted to, and reviewed by, OSM and the public.

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

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

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

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations

and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement

because 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 certifies 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. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the state submittal, which

is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 2, 2012.

**William L. Joseph,**  
*Acting Regional Director, Mid-Continent Region.*

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 25, 2011 .....	July 16, 2012 .....	Sections: 312 IAC 25–1–10.5, 25–1–32.5, 25–1–48, 25–1–51.5, 25–1–75.1, 25–4–18, 25–4–23, 25–4–59, 25–4–64, 25–4–115.1, 25–4–122.1, 25–4–122.2, 25–4–122.3, 25–4–127, 25–5–7; 25–5–16, 25–6–59, 25–6–93, 25–6–94, 25–6–95, and 25–7–5.

■ 3. Section 914.16 is amended by removing and reserving paragraph (ee), to read as follows:

#### § 914.16 Required program amendments.

\* \* \* \* \*

(a)–(ee) [Reserved]

■ 4. Section 914.17 is amended by adding paragraphs (d) and (e) to read as follows:

#### § 914.17 State regulatory program and proposed program amendment provisions not approved.

\* \* \* \* \*

(d) The amendment at 312 IAC 25–5–16 new subsections (d) through (j) submitted on December 6, 2006, concerning requirements for performance bond releases is not approved effective October 18, 2007.

(e) The phrase “unless waived by all parties” contained in paragraph 312 IAC 25–5–16(j)(2) submitted on May 25, 2011, concerning performance bond releases, is not approved effective July 16, 2012.

[FR Doc. 2012–17238 Filed 7–13–12; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2012–0627]

#### Drawbridge Operation Regulation; Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hawthorne Bridge across the Willamette River, mile 13.1, at Portland, OR. This deviation is necessary to accommodate Portland’s Big Float event. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

**DATES:** This deviation is effective from 12:30 p.m. on July 29, 2012 through 1:30 p.m. July 29, 2012.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0627 and are available online by going to <http://www.regulations.gov>, inserting USCG–2012–0627 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email [randall.d.overton@uscg.mil](mailto:randall.d.overton@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Multnomah County has requested that the Hawthorne lift bridge remain closed to vessel traffic to facilitate safe, uninterrupted roadway passage of participants of the Big Float event. The Hawthorne Bridge crosses the

Willamette River at mile 13.1 and provides 49 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.897 which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday. This deviation period is from 12:30 p.m. on July 29, 2012 through 1:30 p.m. July 29, 2012. The deviation allows the Hawthorne Bridge across the Willamette River, mile 13.1, to remain in the closed position and need not open for maritime traffic from 12:30 p.m. through 1:30 p.m. July 29, 2012. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge’s operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 28, 2012.

**Randall D. Overton,**  
*Bridge Administrator.*

[FR Doc. 2012–17222 Filed 7–13–12; 8:45 am]

**BILLING CODE 9110–04–P**