(ii) *Subordination.* The fact that an obligation is subordinated to other debt of the corporation does not prevent the obligation from qualifying as straight debt.

(iii) *Modification or transfer.* An obligation that originally qualifies as straight debt ceases to so qualify if the obligation—

(A) Is materially modified so that it no longer satisfies the definition of straight debt; or

(B) Is transferred to a third party who is not an eligible shareholder under paragraph (b)(1) of this section.

(iv) *Treatment of straight debt for other purposes.* An obligation of an S corporation that satisfies the definition of straight debt in paragraph (l)(5)(i) of this section is not treated as a second class of stock even if it is considered equity under general principles of Federal tax law. Such an obligation is generally treated as debt and when so treated is subject to the applicable rules governing indebtedness for other purposes of the Code. Accordingly, interest paid or accrued with respect to a straight debt obligation is generally treated as interest by the corporation and the recipient and does not constitute a distribution to which section 1368 applies. However, if a straight debt obligation bears a rate of interest that is unreasonably high, an appropriate portion of the interest may be recharacterized and treated as a payment that is not interest. Such a recharacterization does not result in a second class of stock.

(v) *Treatment of C corporation debt upon conversion to S status.* If a C corporation has outstanding an obligation that satisfies the definition of straight debt in paragraph (l)(5)(i) of this section, but that is considered equity under general principles of Federal tax law, the obligation is not treated as a second class of stock for purposes of this section if the C corporation converts to S status. In addition, the conversion from C corporation status to S corporation status is not treated as an exchange of debt for stock with respect to such an instrument.

(6) *Inadvertent terminations.* See section 1362(f) and the regulations thereunder for rules relating to inadvertent terminations in cases where the one class of stock requirement has been inadvertently breached.

(7) *Effective date.* Section 1.1361–1(l) generally applies to taxable years of a corporation beginning on or after May 28, 1992. However, § 1.1361–1(l) does not apply to: an instrument, obligation, or arrangement issued or entered into before May 28, 1992 and not materially modified after that date; a buy-sell agreement, redemption agreement, or agreement restricting transferability entered into before May 28, 1992 and not materially modified after that date; or a call option or similar instrument issued before May 28, 1992 and not materially modified after that date. In addition, a corporation and its shareholders may apply this § 1.1361–1(l) to prior taxable years.

§§ 1.1374–1A and 1.1375–1A [Redesignated as §§ 1.1374–1 and 1.1375–1]

Par. 6. Sections 1.1374–1A and 1.1375–1A are redesignated §§ 1.1374–1 and 1.1375–1, respectively.

§ 1.1374–1 [Amended]

Par. 7. Newly designated § 1.1374–1 is amended as follows:

1. The concluding text of paragraph(b)(2) is amended by removing the language "1.1375–1A(c)(2)" and adding in its place "1.1375–1(c)(2)".

2. Paragraph (d)(2) is amended by removing the language "1.1375–1A(c)(2)" and "1.1374–1A(b)(2)" and adding in its place "1.1375-1(c)(2)" and "1.1374-1(b)(2)".

§ 1.1375–1 [Amended]

Par. 8. Newly designated § 1.1375–1 is amended as follows:

1. Paragraph (b)(1)(ii) is amended by removing the language "1.1374–1A(d)" and adding in its place "1.1374–1(d)".

2. The concluding text of paragraph (c)(2) is amended by removing the language "1.1374–1A(b)(1)" and adding in its place "1.1374–1(b)(1)".

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: May 13, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 92-12507 Filed 5-28-92; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Revegetation—Nonprime Farmland

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval with certain exceptions of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments (Program Amendment No. 91–4 and 91–6) consist of proposed changes to the Indiana Surface Mining Rule provisions concerning revegetation of nonprime farmland. The amendments are intended to establish revegetation success standards for nonprime farmland areas affected by surface mining operations (91–4) and for areas affected by the surface effects of underground mining operations (91–6).

EFFECTIVE DATE: May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letter dated May 22, 1991 (Administrative Record No. IND-0872), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12–5. The proposed amendment would repeal 310 IAC 12–5–64 and add sections 310 IAC 12–5–64.1, 64.2, and 64.3. The added sections concern surface mining operations and would establish standards for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland; and statistical methodology to evaluate the success of revegetation.

By letter dated May 23, 1991 (Administrative Record No. IND–0874), the IDNR submitted a proposed amendment to the Indiana program at 310 IAC 12–5. The proposed amendment would repeal 310 IAC 12–5–65, 12–5–128 and 12–5–129, and add sections 310 IAC 12–5–128.1, 128.2, and 128.3. The added sections concern the surface impacts of underground mining operations and would establish standards for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland; and statistical methodology to evaluate the success of revegetation.

OSM reviewed the proposed amendments and by letters dated September 5, 1991 (Administrative Record No. IND–0946 and IND–0948), addressed its concerns to Indiana regarding the proposed amendments. Indiana responded by letters dated October 10, 1992 (Administrative Record No. IND–0999 and IND–1001). OSM sent a second letter to Indiana addressing its concerns dated February 26, 1992 (Administrative Record No. IND–1036 and IND–1037). Indiana responded by letters dated March 20, 1992 (Administrative Record No. IND–1051 and IND–1052).

OSM announced receipt of the proposed amendments in the June 27, 1991, Federal Register (56 FR 29448 (surface mining) and 56 FR 29447 (underground mining)), and in the same notices, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment periods ended on July 29, 1991. The scheduled public hearings were not held as no one requested an opportunity to provide testimony.

III. Director's Findings

1. 310 IAC 12–5–64.1 (Surface) and 12–5–128.1 (Underground) Revegetation; Standards for Success for Nonprime Farmland

These new sections establish revegetation success standards on nonprime farmland areas affected by surface mining operations and underground mining operations. Each proposed subsection is discussed below.

(a) 310 IAC 12–5–64.1(a) and 12–5–128.1(a)

These subsections provide that the success of revegetation shall be judged on the effectiveness of the revegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation in the area, and the general requirements of 310 IAC 12–5–59 for surface mining, and 310 IAC 12–5–123 for underground mining. The Director finds that the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 816/817.116(a).

(b) 310 IAC 12–5–64.1(b) and 12–5–128.1(b)

These subsections provide that ground cover, production, and stocking are satisfactory if they are not less than 90 percent of the success standard as determined by the sampling techniques under proposed 310 IAC 12–5–64.2/128.2 and the statistical methodology under proposed 310 IAC 12–564.3/128.3 (both discussed below).

The proposed provisions are substantively identical to the counterpart Federal regulations at 30 CFR 816/817.116(a)(2) with one exception. The proposed rules lack a counterpart to 30 CFR 816/817.116(a)(2) which provide that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking.

In response to issue letters from OSM (Administrative Record No. IND–0946 and IND–1036 for surface rules and IND–0948 and IND–1037 for underground rules) concerning this omission, Indiana stated (Administrative Record No. IND–0999 and IND–1051 for surface rules, and IND–1001 and IND–1052 for underground rules) that the IDNR agrees that standards for success of revegetation shall be representative of unmined lands in the area being reclaimed. The IDNR further stated that it believes that proposed 310 IAC 12–5–64.1/128.1(a)(2) require that standards for success be representative of unmined lands and that the performance standards of 310 IAC 12–5–64.1/128.1 will require that the performance standards must be representative of unmined lands. Therefore, with the understanding that Indiana will interpret its regulations to require that standards for success of revegetation shall be representative of unmined land in the area being reclaimed, the Director is approving proposed 310 IAC 12–5–64.1/128.1(b).

(c) 310 IAC 12–5–64.1(c)/128.1(c)

These subsections provide the standards for success which are to be applied under the approved postmining land uses. Proposed subsections (c)(1) concern previously mined areas. Subsections (c)(2) concern areas to be developed for an industrial/ commercial or a residential use. Subsections (c)(3) concern pasture land. Subsections (c)(4) concern areas for which the U.S. Soil Conservation Service predicted yields by soil map unit are used to establish the standard of success. Subsections (c)(5) concern areas developed for shelter belts, fish and wildlife habitat, recreation, or forestry land use. Subsections (c) (6) and (7) concern areas to be used as cropland. Subsections (c)(8) concern standards for barren areas.

Proposed subsections (c)(1) concern previously mined areas that were not reclaimed under 310 IAC 12–5–1 through 310 IAC 12–5–158. The following standards apply to such areas: The ground cover of living plants shall be: (1) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area; (2) Not less than the cover existing before redisturbance; and (3) adequate to control erosion. The Director finds the proposed provision to be substantively identical to the Federal regulations at 30 CFR 816/817.116(b)(5). The Director notes that the proposed provision at 310 IAC 12–5–64.1(c)(1)(A) contains a typographical error ("bext" should read "best"). Indiana has stated that it will correct this typographical error through the "errata process" of the Indiana Register.

Proposed subsections (c)(2) provide that areas to be developed for an industrial/commercial or a residential use less than two years after regrading is completed, the ground cover of living plants shall not be less than what is required to control erosion. The Director finds the proposed language incorporates all of the requirements of the Federal regulations at 30 CFR 816/ 817.116(b)(4), and is, therefore, no less effective than its Federal counterparts.

Proposed subsections (c)(3) concern the success standards for pastureland and provide that the ground cover success standard shall be 100 percent. In addition, the rules provide that the production of living plants on the revegetated area shall be equal to: (A) An approved reference area, (B) current Soil Conservation Service (SCS) predicted yield by soil map unit, or (C) other success standards approved by the director of IDNR including average county yields recognized by the U.S. Department of Agriculture (USDA) used alone or in conjunction with another success standard.

The counterpart Federal regulations at 30 CFR 816/817.116(b)(1) provide that for areas developed for use as pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority. Indiana's proposed use of current Soil Conservation Service (SCS) predicted yield by soil map unit is acceptable because these estimates are based on local conditions and are widely accepted as estimates of potential yield. OSM has approved the use of SCS predicted yields by soil map unit in other regulatory programs.

If other unnamed success standards are to be used by Indiana, such standards must first be submitted to and approved by OSM as an amendment to the Indiana program. Establishment of a new soil productivity standard requires that additional detailed information concerning the validity of the proposed standard be provided to OSM. Such information must show how the proposed standards are superior or equal to the use of reference areas to measure soil productivity of mined lands. In its March 20, 1992, letters to OSM, Indiana stated that the IDNR will request approval by OSM for other standards prior to their use in the Indiana program if they vary significantly from the approved standards. The Director concurs and finds the language at subsections (c)(3)(C) which refers to "other success standards" is no less effective than the Federal regulations at 30 CFR 816/817.116(b)(1) provided that Indiana will request approval by OSM for other standards prior to their use in the Indiana program.

The Federal regulations at 30 CFR 816/817.116(a)(2) provide that standards for success shall include criteria representative of unmined lands in the area being reclaimed. In its February 26, 1992, letters to Indiana, OSM asked Indiana to clarify how the use of crop yield data from the Indiana Agricultural Statistics Service at Purdue University in cooperation with the USDA, National Agriculture Statistics Service is no less effective than 30 CFR 816/817.116(a)(2). Indiana's average county yield data contains data of yields from previously mined lands and is, therefore, less effective than 30 CFR 816/817.116(a)(2). In response, Indiana stated that the amount of previously mined acreage being farmed is so limited that the inclusion of these yields essentially has no impact upon the overall yields calculated for county average. Indiana currently uses the average county yield data as a weather correction factor applied to predicted soil mapping unit yields.

There is currently no way to separate data from previously mined lands from that representing unmined lands in the Indiana average county yield data. Therefore, because the Federal regulations require that standards for success shall be representative of unmined lands, the Director finds that the use of the Indiana average county yield as the sole standard for determining success of revegetation is less effective than the Federal regulations at 30 CFR 816/817.116(a)(2). However, the use of Indiana average county yield data as a correction factor is not inconsistent with the Federal regulations. Therefore, the Director is approving proposed 310 IAC 12-5-64.1/128.a(c)(3)(C) except the words "alone or" which would allow Indiana average county yield data recognized by the USDA to be used alone as the sole standard for revegetation success. In addition, to be no less effective than the Federal regulations, the Director is requiring that Indiana remove the words "alone or" from 310 IAC 12-5-64.1/128.a(c)(3)(C).

Proposed subsections (c)(4) provide that if SCS predicted yields are used to establish the standard of success, the standard of success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit area at the time the permit was issued. The method for establishing the standard, once selected, may not be modified without the approval of the director. The Director finds that the proposed provision is consistent with the Federal standards at 30 CFR 816/817.116(a)(2) which require that standards for success be representative of unmined lands in the area being reclaimed.

Proposed subsections (c)(5) provide the standard for success of areas to be developed for shelter belts or fish and wildlife habitat, recreation, or forestry land use. The success of revegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. Ground cover must be adequate to control erosion. Proposed stocking rates would not be less than: (A) 450 plantings per acre for a forestry use; and (B) a rate appropriate to support a shelter belt or a land use (other than forestry) described in subsections 310 IAC 12-5-64.1/128.1(c)(5). In addition, in the letters dated October 10, 1991, Indiana explained that prior to permit approval, the revegetation plan is reviewed and developed in accordance with the comments prepared by the wildlife biologist in the Technical Services Section of the Indiana Division of Fish and Wildlife. The Director finds that the proposed provisions at 310 IAC 12-5-64.1/128.1(c)(5) are consistent with and no less effective than the Federal regulations at 30 CFR 816/817.116(b)(3).

Proposed subsections (c)(6) concern the success standards for cropland and provide that crop production on the revegetated area must be at least equal to one of the following: (A) an approved reference area; (B) current SCS predicted yield by soil map unit; or (C) other success standards approved by the director of IDNR, including average county yields recognized by the USDA used alone or in conjunction with another success standard. As discussed above in the Director's finding concerning proposed 310 IAC 12-5-64.1/128.1(c)(3)(C), Indiana's proposed use of SCS predicted yield by soil map unit is acceptable because these estimates are based on local conditions and are widely accepted as estimates of potential yield. If other unnamed success standards are to be used, Indiana must first submit those standards to OSM for approval prior to their use in the Indiana program. Also as discussed above in the Director's finding for proposed 310 IAC 12-5-64.1/128.1(c)(3)(C), Indiana average county yield data contains data of yields of previously mined land. There is currently no way to separate data from previously mined lands from data of unmined lands in the Indiana average county yield data. Therefore, the proposed use of average county yield data as the sole standard of revegetation success is less effective than 30 CFR 816/817.116(a)(2).

The Director is approving the proposed language at 310 IAC 12-5-64.1/128.1(c)(6)(C) except the words "alone or" which would allow Indiana average county yield data recognized by the USDA to be used alone as the sole standard for revegetation success. In addition, to be no less effective than the Federal regulations at 30 CFR 816/817.116(a)(2), the Director is requiring that Indiana remove the words "alone or" from 310 IAC 12-5-64.1/128.1(c)(6)(C).

Proposed subsections (c)(7) provide that a crop grown to demonstrate satisfaction of the requirements for cropland at subsections 310 IAC 12-5-64.1/128.1 (c)(6) must be one or more of the crops listed in 310 IAC 12-0.5-32 and as specified in the plan of reclamation. Proposed subsections (c)(7) also provide that an adjustment to predicted crop yields may be made according to accepted agronomic practices after consulting with SCS or other sources approved by the director for factors including disease, weather, tillage management, pests, and seed or plant selection. If SCS predicted yields by soil map unit are used to establish the standard for success, the standard shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit area at the time the permit was issued. The method of establishing the standard, once selected, may not be modified without the approval of the director of IDNR. The Director finds that the proposed provisions are consistent with the Federal requirements for areas developed for use as cropland at 30 CFR 816/817.116(b)(2) which require that such areas be revegetated to be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

Proposed subsections (c)(8) provide that the aggregate of barren areas within an area under evaluation must not exceed five percent of the area. Subsections (c)(8) further provide that revegetation is not successful unless each barren area within an area under evaluation is: (A) Smaller than 750 square feet; (B) completely surrounded by desirable vegetation; and (C) in compliance with sections 310 IAC 12-5-12.1 and 78.1 concerning topsoil and subsoil, and 310 IAC 12-5-55.1 and 119.1 concerning backfilling and grading. The Director finds that, with the requirements at 310 IAC 12-5-59 which require that revegetative cover shall be capable of stabilizing the soil from erosion, the proposed standards are reasonable, are consistent with similar standards approved by OSM for use in other regulatory programs (for example, Tennessee), and are not inconsistent with the Federal regulations at 30 CFR 816/817.116.

(d) 310 IAC 12-5-64.1/128.1(d)

These subsections provide that a single reference area may be used for more than one permit area if the requirements of proposed subsections (d) are met with respect to each permit area. Proposed subsections (d) further provide that a reference area may be used to establish success standards if specific criteria are met. The criteria concern the minimum size of the reference area relative to the size of the area to be represented, and require the reference area be within 20 miles of the area to be represented. Right-of-entry on the reference area must be secured by written agreement or consent for the entire period in which the reference area will be used. Each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented, and the management of the reference area shall be identical to the area to be represented.

There is no direct Federal counterpart to this proposed provision. However, the Director finds that the proposed provision is reasonable and not inconsistent with the Federal regulations at 30 CFR 816/817.116 concerning standards for success of revegetation. Therefore, the Director is approving these provisions.

(e) 310 IAC 12-5-64.11/28.1(e)

These subsections provide that the director of IDNR may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if: The practices can be expected to continue as part of the postmining land use; or discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

The Director finds that the proposed provisions are substantively identical to the counterpart Federal regulations at 30 CFR 816/817.116(c)(4) which also authorize regulatory approval of selective husbandry practices.

(f) 310 IAC 12-5-64.1/128.1(f)

These subsections identify the selective husbandry practices which may be approved under 310 IAC 12-5-64.1/128.1(e). These provisions require that selective husbandry practices which may be approved must be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. The following selective husbandry practices are proposed: (1) Disease, pest, and vermin control; (2) repair of rills and gullies; and (3) pruning, reseeding, or transplanting specifically necessitated by these practices. With the exception of repair of rills and gullies, the proposed language is substantively identical to the Federal regulations at 30 CFR 816/817.116(c) (4). Rill and gully repair as a normal husbandry practice is currently a part of the approved Indiana program at 310 IAC 12-5-64(b). In letters submitted by Indiana (Administrative Record No. IND-0999 and IND-1001) dated October 10, 1991, Indiana stated that routine repair of rills and gullies is a normal conservation practice engaged in by landowners in southwestern Indiana on cropland and pasture land, and encouraged by the Soil Conservation Service. In addition, Indiana stated that the Indiana rule does not provide a blanket approval for rill and gully repair, but allows approval on a case-by-case basis.

The Director finds that the proposed provisions are no less effective than the Federal regulations. The Director notes that 30 CFR 816/817.116(c)(4) also provides that prior approval of proposed selective husbandry practices must be obtained from OSM in accordance with 30 CFR 732.17. Therefore, any additional selective husbandry practices which Indiana may wish to add to the list of approved selective husbandry practices at 310 IAC 12-5-64.1/128.1(f) must first be submitted to and approved by OSM as a state program amendment under 30 CFR 732.17.

(g) 310 IAC 12-5-64.1/128.1(g)

These subsections provide that success standards identified in 310 IAC 12-5-64.1(c) and 12-5-128.1(c) shall be met during the growing seasons of any two years of the responsibility period, except the first year, for cropland and pasture land. The success standards for any other land use are measured by the last year of the responsibility period. The Director finds these provisions to be substantively identical to the Federal regulations at 30 CFR 816/817.116(c)(2).

Proposed 310 IAC 12-5-64.1/128.1(g) also provide that small areas which are repaired under 310 IAC 12-5-64.1/128.1 may be exempted from the success standards if the grading and vegetation blends with the contiguous area which meets the success standards.

By letter dated September 5, 1991 (Administrative Record No. IND-0946 and IND-0948), OSM informed Indiana that the Federal regulations do not authorize that areas of any size may be exempted from the revegetation success standards. In response (Administrative Record No. IND-0999 and IND-1001), Indiana stated on October 10, 1991, that a standard for success will be applied to all affected areas dependent upon the approved post-mining land use, and that no area shall be exempted from the success standards. Indiana would allow a "test plot" to substitute for these small areas. "Test plots" are areas that due to similar soils, topography, age, management, locality, and any other factor which affects production, can be expected to produce the same yield as the area being evaluated. Such "test plot" procedures are detailed at proposed 310 IAC 12-5-64.2/128.2(c)(2) and at 310 IAC 12-5-64.2/128.2(d)(2) dependent upon the crop grown (Administrative Record No. IND-1051 and IND-1052). Indiana also indicated that the "small areas" which are the focus of this proposed provision are reclaimed sediment basins.

In light of the statements from Indiana dated October 10, 1991, that a standard for success will be applied to all affected areas, and that Indiana's "test plot" procedures at 310 IAC 12-5-64.2/128.2(c)(2) and 310 IAC 12-5-64.2/128.2(d)(2) would be applied to these small areas, the Director finds the use of "test plots" as described above along with the requirement that the grading and revegetation must blend with the contiguous area which meets the success standards is reasonable and not inconsistent with the Federal regulations at 30 CFR 816/817.116. However, the Director is requiring that Indiana amend 310 IAC 12–5–64.1/128.1(g) to clarify that "test plots" will be used with the repair of small areas and that no such small areas will be exempted from the success standards.

2. 310 IAC 12–5–64.2 (Surface) and 12–5–128.2 (Underground) Revegetation; Sampling Techniques for Nonprime Farmland

The changes proposed in these new sections establish requirements for sampling techniques for nonprime farmland areas affected by surface mining operations and the surface effects of underground mining operations. Subsection (a) provides that success of revegetation is evaluated according to the standards as set forth in 310 IAC 12–5–64.1/128.1 and, if a measurable success standard applies, using sampling techniques set forth in proposed 310 IAC 12–5–64.2/128.2 or which have a 90 percent statistical confidence interval (a one-sided test with a 0.10 alpha error) and which are approved by the director of IDNR. Subsection (b) provides the methods to be followed to evaluate ground cover. Subsection (c) provides the methods to be used to evaluate the production of living plants on cropland used for hay and on pasture land. Subsection (d) provides the methods to be used to evaluate the production of living plants on cropland for crops other than hay. Subsection (e) provides the method to be used to evaluate stocking or planting on an area developed as fish and wildlife habitat, recreation, forest, or shelter belt.

In response to letters from OSM (Administrative Record No. IND–1036 and IND–1037) Indiana stated (Administrative Record No. IND–1051 and IND–1052) that the "or" in proposed subsection (a) means that other methods may be approved if they meet the requirements of 310 IAC 12–5–64.2(a) and 12–5–128.2(a). Indiana reasoned that if a sampling technique is scientifically and statistically valid, the regulatory authority should be given the discretion to approve appropriate techniques. OSM agrees and concurs that any methods approved by the regulatory authority must be scientifically and statistically valid in addition to having a 90 percent statistical confidence interval (in other words, a one-sided test with a 0.10 alpha area).

The proposed language at 310 IAC 12–5–64.2(a)(1) states that statistical procedures may be used if approved by the Indiana Natural Resources Commission (NRC) and contained in the reclamation plan. In a letter dated March 20, 1992 (Administrative Record No. IND–1051), Indiana stated that the NRC no longer approves the plan of reclamation and that these responsibilities have been delegated to the director of IDNR. Therefore, the correct reading of 310 IAC 12–5–64.2(a) should be similar to that of 310 IAC 12–5–128.2(a) and read, "* * * and which are approved by the director." Indiana will correct the language at 310 IAC 12–5–64.2(a)(1) in future rulemaking. In the meantime, the underlying Indiana statutes vest with the director of IDNR the authority for such approvals.

In the March 20, 1992, letters, Indiana clarified that the phrase "another institution" found at 310 IAC 12–5–64.2/128.2(d)(3)(C) means another institution of the quality of those universities identified at 310 IAC 12–5–64.2/128.2(d)(3) (A) and (B).

Proposed 310 IAC 12–5–64.2/128.2(e) establish the procedures for evaluating stocking or planting on an area developed as fish and wildlife habitat, recreation, forest, or shelter belt. These provisions incorporate the revegetation standards of success found at 30 CFR 816/817.116(b)(3).

The Director finds that the proposed provisions at 310 IAC 12–5–64.2/128.2 are technically sound and satisfy the requirements of the Federal regulations at 30 CFR 816/817.116 (Administrative Record No. IND–1069). In addition, the Director is requiring that Indiana amend 310 IAC 12–5–64.2(a) by deleting subparagraph (1) concerning approval of statistical methods by the NRC.

3. 310 IAC 12–5–64.3 (Surface) and 12–5–128.3 (Underground) Revegetation; Statistical Methodology

The proposed changes in these new sections establish requirements for statistical methodology to be used when measuring the success of revegetation on nonprime farmland. Subsections (a) provide that the methods set forth in 310 IAC 12–5–64.3/128.3 are used to evaluate the success of revegetation pursuant to 310 IAC 12–5–64.1/128.1 using the sampling techniques of 310 IAC 12–5–64.2/128.2.

Subsections (b) provide that the minimum number of observations for the area under evaluation shall be determined by following subsections (b)(1), (2), and (3). Subsections (b)(1) provide a table to be used, except as provided in subsections (b)(2) through (b)(3), to determine the required minimum number of observations. Subsections (b)(2) provide that the director of the IDNR may increase the minimum number of observations if any two observations vary by more than 15 percent. Subsections (b)(2) also provide that if additional samples are required, the formula in subsections (e) shall be used to determine that the number of observations evaluated is sufficient. Subsections (b)(3) provide that a statistical analysis of the result obtained from the area under evaluation shall be performed using the method from subsections (c) or (d). Subsections (b)(3) also provide that if there are apparent discrepancies between the submitted yield derived from random sampling and yield estimates derived by the director, the operator may be required to harvest specific fields in their entirety.

Subsections (c) provide that the sampling results shall be analyzed and identify the specific statistical parameters which must be determined.

Subsections (d) provide that other statistical methods may be approved by the director of IDNR.

Subsections (e) provide a specific formula to be used to determine if the number of samples is sufficient.

In its March 20, 1992, letters, Indiana clarified that the title in the right-hand column in the table found at 310 IAC 12–5–64.3/128.3(b)(1) should read "observations" and not "evaluations." Indiana will correct this through the "errata process" in the Indiana Register. Indiana will also correct a typographical error at 310 IAC 12–5–128.3(c)(4): the sample standard deviation formula should have a square root sign placed over "M/d."

The Director finds the proposed provisions to be technically sound and satisfy the required Federal regulations at 30 CFR 816/817.116 (Administrative Record No. IND–1069).

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service, the National Forest Service, and the U.S. Soil Conservation Service responded that they had no comments. The Mine Safety and Health Administration responded that it found no conflicts with the proposed rules.

The U.S. Bureau of Mines responded (Administrative Record No. IND–0908) with three comments. The commenter noted that proposed 310 IAC 12–5–64.1(c)(1)(A) uses the phrase "other suitable material" and asked how the phrase is defined and where within the context and content of this rule is such a definition found? The Director notes that the phrase "other suitable material" is currently part of the approved Indiana program at 310 IAC 12-5-64(c)(1). In addition, the Indiana rules at 310 IAC 12-5-12.1(c) concern soil substitutes and supplements.

The commenter also asked to what the proposed rule at 310 IAC 12-5-64.1(d)(2) refers. The proposed rule at (d)(2) provides that each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented. This clause means that the reference area must accurately represent the pre-mine soils and geology.

The commenter stated that the term "small areas" as used at 310 IAC 12-5-64.1(g) should have some limits defined. The Director notes that in a letter to OSM dated October 10, 1991 (Administrative Record No. IND-0999) Indiana stated that an example of a "small area" under 310 IAC 12-5-64.1(g) is a reclaimed sediment basin. In addition as discussed in Finding 1(g) above, no area will actually be exempt from the Indiana revegetation standards. Instead, Indiana will allow a "test plot" to substitute for these small areas along with the requirement that the grading and revegetation must blend with the contiguous area which meets the success standards.

Public Comments

The public comment periods and opportunity to request a public hearing were announced in the June 27, 1991, **Federal Register** (56 FR 29447 and 29448). The comment periods closed on July 29, 1991. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the above findings, the Director is approving with certain exceptions proposed Program Amendment Numbers 91-4 and 91-6 submitted by Indiana on May 22, and May 23, 1991, as clarified by letters from Indiana to OSM dated October 10, 1991, and March 20, 1992. As discussed in Finding 1(c), the Director is not approving the words "alone or" at sections 310 IAC 12-5-64.1(c)(3)(C) and 12-5-128.1(c)(6)(C). In addition, the Director is requiring that Indiana amend these sections to delete the words "alone or." As discussed in Finding 1(g), the Director is requiring that Indiana amend 310 IAC 12-5-64.1(g) and 12-5-128.1(g) to clarify that "test plots" will be used with the repair of small areas and that no such small areas will be exempted from the success standards. As discussed in Finding 2, the Director is requiring that Indiana amend 310 IAC 12-5-64.2(a) by deleting subparagraph (1).

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 the states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that these amendments contain no provisions in these categories and that EPA's concurrence is not required. However, EPA responded to the Director's request for comments and stated that EPA had no comments and that it concurred on the proposed amendments (Administrative Record No. IND-0944).

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of sections 2(a) and 2(b) of E.O. 12778. Under SMCRA Section 405 and 30 CFR 884 and Section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 27, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (mm) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(mm) The following amendments (Program Amendment Nos. 91–4 and 91–6) to the Indiana program as submitted to OSM on May 22, and May 23, 1991, respectively, are approved, except as noted below, effective May 29, 1992: (1) 310 IAC 12–5–64.1 and 30 IAC 12–5–128.1 concerning standards for success for nonprime farmland except the words "alone or" at 310 IAC 12–5–64.1 (c)(3)(C) and (c)(6)(C) and 310 IAC 12–5–128.1 (c)(3)(C) and (c)(6)(C); (2) 310 IAC 12–5–64.2 and 310 IAC 12–5–128.2 concerning sampling techniques for nonprime farmland; (3) 310 IAC 12–5–64.3 and 310 IAC 12–5–128.3 concerning statistical methodology; and (4) Deletion of 310 IAC 12–5–64, 310 IAC 12–5–65, 310 IAC 12–5–128, and 310 IAC 12–5–129.

3. Section 914.16 is amended by adding new paragraphs (i), (j) and (k) to read as follows:

§ 914.16 Required program amendments.

* * * * *

(i) By November 1, 1992, Indiana must amend 310 IAC 12–5–64.1(c)(3)(C) and (c)(6)(C) and 310 IAC 12–5–128.1(c)(3)(C) and (c)(6)(C) by deleting the words "alone or."

(j) By November 1, 1992, Indiana must amend 310 IAC 12–5–64.1(g) and 12–5–128.1(g) to clarify that "test plots" will be used with the repair of small areas and that no such small areas will be exempted from the success standards.

(k) By November 1, 1992, Indiana must amend 310 IAC 12–5–64.2(a) by deleting paragraph (1).

[FR Doc. 92–12492 Filed 5–28–92; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Public Land Order 6928

[WY–930–4214–10; WYW 28908]

Withdrawal of National Forest System Land for Crandall Creek Administrative Site; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect significant capital improvements associated with the Crandall Creek Administrative Site. The land has been and remains open to surface uses authorized by the Forest Service and open to mineral leasing.

EFFECTIVE DATE: May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to all valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Forest Service's capital investments at the Crandall Creek Administrative Site:

Sixth Principal Meridian

Shoshone National Forest

T. 56 N., R. 106 W.,
Sec. 9, W½SW¼SW¼NE¼, SE¼SE¼NW¼, NE¼NE¼SW¼, and W½NW¼NW¼SE¼.

The area described contains 30 acres in Park County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 20, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–12583 Filed 5–28–92; 8:45 am]

BILLING CODE 4310–22–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 71

RIN 3067–AB63

Coastal Barrier Resources System Amendments Related to the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the National Flood Insurance Program (NFIP) regulations related to the availability of flood insurance for properties located in any area within the Coastal Barrier Resources System. This interim rule is necessary to comply with section 14 of the Coastal Barrier Improvement Act of 1990, which requires that regulations to assure compliance with the provisions of the Act be promulgated, and it is intended to clarify the effective date of the prohibition against the sale of new NFIP flood insurance in the newly designated areas of the System.

DATES: *Effective Date:* May 29, 1992.

COMMENT DATES: Comments must be submitted on or before July 28, 1992.

ADDRESSES: Send comments or inquiries to Rules Docket Clerk, Office of the General Counsel, room 840, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3419.

SUPPLEMENTARY INFORMATION: The Coastal Barrier Improvement Act of 1990 (CBIA), Public Law 101–591, approved November 16, 1990, 16 U.S.C. 3501 *et seq.*, greatly expanded the identified land in the Coastal Barrier Resources System (CBRS) established by the Coastal Barrier Resources Act of 1982 (CBRA), 16 U.S.C. 3501 *et seq.*, and, in addition, identified areas that are not within the CBRS but are in an "otherwise protected area". The CBIA defines the term "otherwise protected area" as an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. Section 9 of the 1990 Act amended section 1321 of the National Flood Insurance Act of 1968, 42 U.S.C. 4028, to prohibit new flood insurance coverage after November 16, 1991, for new construction or substantial improvement of structures located in areas which are not identified as being in the CBRS but are identified as being in an "otherwise protected area", except for structures that are used in a manner consistent with the purpose for which the area is protected.

Because no effective date was given in CBIA for implementing the prohibition against the sale of flood insurance in the areas newly identified as being within the CBRS, the Federal Emergency Management Agency (FEMA) has interpreted the intent of Congress to make the prohibition effective on November 16, 1990 (the date CBIA was enacted). It is, therefore, the intention of this regulation to identify the documentation which will be required to demonstrate that CBRA/CBIA do not apply to a structure located within the newly identified areas of the CBRS or located within an identified "otherwise protected area" so that it is eligible for new flood insurance coverage.

In defining "new construction" and "substantial improvement" for structures in the areas newly identified by the 1990 CBIA, FEMA has endeavored to be consistent with the definitions established for complying with the 1982 CBRA requirements. Thus, this regulation defines "new construction" within the areas newly identified by the 1990 CBIA as structures for which the start of construction took place on or after November 16, 1990.

A structure located in a coastal barrier area newly identified by the 1990 CBIA is eligible for flood insurance unless, subsequent to November 15, 1990, it is substantially improved (see 44 CFR 59.1 for the definition of "substantial improvement").

In accordance with the statutory effective date in the 1990 CBIA pertaining to "otherwise protected areas," flood insurance coverage may be provided for a building located within an identified "otherwise protected area" on which the start of construction begins after November 15, 1990, so long as the building is completed (with walls and a roof permanently in place) no later than November 16, 1991. Flood insurance coverage may also be provided for a building in an "otherwise protected area" built after November 16, 1991, if the building is used in a manner consistent with the purpose for which the area is protected.

To enable FEMA to implement these provisions in a responsible manner, the Agency is requiring some basic documentation.

(a) In order to obtain flood insurance coverage for a structure located in an area newly identified as being in the CBRS as of November 16, 1990, the owner must submit the following documentation:

(1) A legally valid building permit or equivalent documentation for the construction of the structure, dated prior to November 16, 1990. If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built;

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The start of construction of such structure took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 15, 1990.

(b) In order to obtain flood insurance coverage for a structure located in an area identified as an "otherwise protected area" for which the start of construction for the building was prior to November 16, 1990, the owner must submit the following documentation:

(1) A legally valid building permit or equivalent documentation for the construction of the structure, dated prior to November 16, 1990. If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built;

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The start of construction of such structure took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 16, 1991.

(c) In order to obtain flood insurance coverage for a structure located in an area identified as an "otherwise protected area" for which the start of construction for the building began after November 15, 1990, but was completed with the walls and a roof permanently in place no later than November 16, 1991, the owner must submit the following documentation:

(1) A legally valid building permit or equivalent documentation for the construction of the structure, dated prior to November 16, 1991. If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built;

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place no later than November 16, 1991; and

(ii) The structure has not been substantially improved since November 16, 1991.

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying that the building was completed (walled and roofed) by November 16, 1991. Equivalent proof may include, for example, evidence of final inspection of the building's electrical system; a deed, together with closing or settlement documents establishing that the title was transferred as to the land and improvement by November 16, 1991, etc.

A structure located in an area identified as an "otherwise protected area" not eligible for insurance under the conditions listed above may nonetheless be eligible for flood insurance if the owner submits a written statement from the governmental body or qualified organization overseeing the "otherwise protected area" certifying that the building is used in a manner consistent with the purpose for which the area is protected.

Considerable time was spent analyzing this complicated piece of legislation, particularly the issue related to the effective date for the prohibition of new flood insurance in the areas newly identified as being in the CBRS. As a result, in order to comply with section 14 of the 1990 Act, which requires that regulations to assure compliance with the provisions of the Act be promulgated by November 16, 1991, these regulations are being implemented as an interim rule. Nevertheless, comments are requested and will be considered before further regulations are issued.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA has prepared an environmental assessment of the issuance by FEMA of this interim rule. The assessment concludes that there will be no significant impact on the natural or manmade environment as a result of the definitions in this interim rule or the documentation to be required. It is, therefore, found that the action will not have a significant impact on the natural or manmade environment. On this basis, an Environmental Impact Statement will not be prepared. Copies of the environmental assessment are available for inspection at the Federal Emergency Management Agency, room 840, 500 C St., SW., Washington, DC 20472.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act

The documentation requirements of 44 CFR 71.4 are collections of information, were submitted to the Office of Management and Budget (OMB) and were approved in accordance with the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 *et seq.* under OMB control number 3067–0120.

The recordkeeping and reporting burdens for the documentation requirements are estimated to average 1.5 hours per respondent. These include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. FEMA requests that commenters address these estimates as part of their comments submitted to the rulemaking record at the address indicated at the beginning of this interim rule. Comments on the paperwork issues including the burden estimates and any aspects of the information collection requirements should also be sent to the Office of Management and Budget, Paperwork Reduction Project (3067–0120), 3235 New Executive Office Building, Washington, DC 20503.

List of Subjects in 44 CFR Part 71

Coastal zone, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 71 is amended as follows:

1. The authority citation for part 71 is revised to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; 42 U.S.C. 4028; §§ 9 and 14, Pub. L. 101–591, 42 U.S.C. 4028(b).

2. The heading for part 71 is revised to read as follows:

PART 71—IMPLEMENTATION OF COASTAL BARRIER LEGISLATION

§ 71.1 [Amended]

3. Section 71.1 is amended by revising the phrase "(Pub. L. 97–348) as that Act amends" to read "(Pub. L. 97–348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591), as those Acts amend"; and by revising "(42 U.S.C. 400a *et seq.*)" to read "(42 U.S.C. 4001 *et seq.*)".

§ 71.2 [Amended]

4. Section 71.2 is amended by revising paragraphs (b) introductory text through (d) and adding paragraphs (e) through (k) to read as follows:

§ 71.2 Definitions.

* * * * *

(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is "new construction" unless it meets the following criteria:

* * * * *

(c) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is "new construction" unless it meets the following criteria:

(1) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(2) The start of construction (see 44 CFR part 59) took place prior to November 16, 1990.

(d) For the purpose of this part, a structure located in an "otherwise protected area" is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and

(ii) The start of construction took place prior to November 16, 1990; or

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1991; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991.

(e) For the purpose of this part, a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, is a "substantial improvement" if the substantial improvement (see 44 CFR part 59) of such structure took place on or after October 1, 1983.

(f) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is a "substantial improvement" if the substantial improvement of such structure took place on or after November 16, 1990.

(g) For the purpose of this part, a structure located in an "otherwise protected area" is a "substantial improvement" if the substantial improvement of such structure took place after November 16, 1991.

(h) For the purpose of this part, a "policy of flood insurance" means a policy issued pursuant to the National Flood Insurance Act of 1968, as amended. This includes a policy issued directly by the Federal Government as well as by a private sector insurance company under the Write Your Own

Program as authorized by 44 CFR part 62.

(i) For the purpose of this part, "new policy of flood insurance" means a policy of flood insurance other than one issued by an insurer (Write Your Own insurer or the Federal Government as the direct insurer) effective upon the expiration of a prior policy of flood insurance issued by the same insurer without any lapse in coverage between these two policies.

(j) For the purpose of this part, "new flood insurance coverage" means a new or renewed policy of flood insurance.

(k) For the purpose of this part, "otherwise protected area" means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes and identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990, as an area that is:

(1) Not within the CBRS and

(2) In an "otherwise protected area."

5. Section 71.3 is revised to read as follows:

§ 71.3 Denial of flood insurance.

(a) No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990.

(b) No new flood insurance coverage may be provided on or after November 16, 1990, for any new construction or substantial improvement of a structure located in any area newly identified as being in the CBRS as of November 16, 1990.

(c) No new flood insurance coverage may be provided after November 16, 1991, for any new construction or substantial improvement of a structure which is located in an "otherwise protected area."

(d) Notwithstanding paragraph (c) of this section, new flood insurance coverage may be provided for a structure which is newly constructed or substantially improved in an "otherwise protected area" if the building is used in a manner consistent with the purpose for which the area is protected.

6. Section 71.4 is amended by revising paragraphs (a), (b), (c) introductory text, and (d) introductory text, and adding paragraphs (e) through (h) to read as follows:

§ 71.4 Documentation.

(a) In order to obtain a new policy of flood insurance for a structure which is located in an area identified as being in the CBRS as of November 16, 1990, or in order to obtain a new policy of flood insurance after November 16, 1991, for a structure located in an "otherwise protected area," the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance. However, if the new policy of flood insurance is being obtained from an insurer (Write Your Own or the Federal Government as direct insurer) that has previously obtained the documentation described in this section, the property owner need only submit a signed written certification that the structure has not been substantially improved since the date of the previous documentation.

(b) The documentation must be submitted along with the application for the flood insurance policy.

(c) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

* * * * *

(d) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place on or after October 18, 1982, but the structure was completed (walls and roof permanently in place) prior to October 1, 1983, the documentation shall consist of:

* * * * *

(e) For a structure located in an area newly identified as being in the CBRS as of November 16, 1990, where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 15, 1990.

(f) For a structure located in an area identified as an "otherwise protected area" where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 16, 1991.

(g) For a structure located in an area identified as an "otherwise protected area" where the start of construction of the structure took place after November 15, 1990, but construction was completed with the walls and a roof permanently in place no later than November 16, 1991, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1991.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991; and

(ii) The structure has not been substantially improved since November 16, 1991; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying that the building was completed (walled and roofed) by November 16, 1991.

(h) For a structure located in an area identified as an "otherwise protected area" for which the documentation requirements of neither paragraph (f) nor paragraph (g) of this section have been met, the documentation shall consist of a written statement from the governmental body or qualified organization overseeing the "otherwise protected area" certifying that the building is used in a manner consistent with the purpose for which the area is protected.

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Dated: May 5, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-12409 Filed 5-28-92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 44 and 45

[CGD 92-033]

Special Service Great Lakes Limited Domestic Load Line

AGENCY: Coast Guard, DOT.

ACTION: Notice of exemption and request for comments.

SUMMARY: The Port of Milwaukee requested approval of a special service limited domestic load line for certain unmanned barges carrying nonhazardous cargoes. These barges are to operate between Chicago, Illinois and Milwaukee, Wisconsin. The Coast Guard has determined that the barges may be issued a special service limited domestic load line, to be implemented on a case-by-case basis, by vessel, subject to special operating and certification requirements. This notice is intended to advise members of the maritime community and to request public comment.

DATES: This notice is effective on May 29, 1992. Comments must be received on or before June 29, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 92-033), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Keith Dabney, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard (G-MTH-3), room 1308, 2100 Second Street NW., Washington, DC 20593-0001. Telephone (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Request for Comments

Public comments are requested in order to provide information for an evaluation of the policy described in this notice and in order to evaluate any similar requests in the future. The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 92-033) and the specific provision to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Comments must be received not later than 30 days after the effective date specified under "DATES," above.

Background and Purpose

Section 45.15(d) of title 46 of the Code of Federal Regulations allows exemptions from load line and marking requirements for unmanned river service dry cargo barges operated between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana and intermediate ports in Lake Michigan. The exemptions are subject to the certification and special operating requirements listed in subpart E of 46 CFR part 45. A similar variance has been requested by the Port of Milwaukee for unmanned barges carrying nonhazardous cargoes on a route from Calumet Harbor, Chicago, Illinois to Milwaukee, Wisconsin.

The Coast Guard does not believe that a blanket exemption should be established for the Calumet Harbor-Milwaukee route. However, based on information provided by the Port of Milwaukee and the recommendations of the American Bureau of Shipping (ABS), and due to the sheltered nature of the voyage along the requested route, the Coast Guard has determined that sufficient reason exists to make available a Special Service Limited Domestic Voyage Load Line Certificate for vessels, on a case-by-case basis, so long as certain special operating and certification requirements are met. Authority exists under 46 CFR part 44 to provide such a Special Service Limited Domestic Voyage Load Line Certificate. The certificate would be available for vessels that operate between Calumet Harbor, Chicago, Illinois and Milwaukee, Wisconsin, and intermediate ports.

The requirements for the granting of such a certificate are set forth in this notice. They consist of essentially all of the requirements for unmanned river service dry cargo barges contained in 46 CFR part 45, subpart E (Calumet Harbor-Burns Harbor route), in addition to certain operating restrictions. The certificate requirements, and additional operating and certification restrictions, which will appear on the load line certificates, are:

1. The certificates shall be valid only for unmanned river dry cargo barges.
2. Vessel operation is limited to voyages between Calumet Harbor, Chicago, Illinois, and Milwaukee, Wisconsin. Vessels may make stops along any ports of call along this route.
3. No hazardous materials, as defined in 46 CFR part 148 or 49 CFR subchapter C, will be carried. Cargoes to be carried are limited to dry commodities, such as steel products, heavy machinery, dry bulk fertilizer, grain, bulk cement, scrap materials, and forest products.
4. The towing vessel shall have adequate horsepower to handle the size of the tow, with a minimum of 1,000 horsepower for three barges.
5. Before commencement of any voyage, the towing vessel operator shall ensure the following:

(a) Deck and side shell plating must be free of visible holes, fractures, or