

result in a positive economic impact for some small entities, the number of small entities for which the impact will be significant is not substantial. The PBGC therefore certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending 29 CFR part 4007 as follows.

PART 4007—PAYMENT OF PREMIUMS

1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1301(a), 1306, 1307.

2. Section 4007.8 is revised to read as follows:

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date under § 4007.11, the PBGC will assess a late payment penalty charge as determined under this paragraph (a), except to the extent the charge is waived under paragraphs (b) through (g) of this section. The charge will be no more than 100% of the unpaid premium. The charge will be based on the number of months (counting any portion of a month as a whole month) from the due date to the date of payment and is subject to a floor of \$25 (or, if less, the amount of the unpaid premium).

(1) *Penalty rate for post-1995 premium payment years.* This paragraph (a)(1) applies to the premium for any premium payment year beginning after 1995. The penalty rate is—

(i) 1% per month (for all months) on any amount of unpaid premium that is paid on or before the date the PBGC issues a written notice to any person liable for the plan's premium that there is or may be a premium delinquency (e.g., a premium bill, a letter initiating a premium compliance review, or a letter questioning a failure to make a premium filing); or

(ii) 5% per month (for all months) on any amount of unpaid premium that is paid after that date.

(2) *Penalty rate for pre-1996 premium payment years.* This paragraph (a)(2) applies to the premium for any premium payment year beginning before 1996. The penalty rate is 5% per month

(for all months) on any amount of unpaid premium.

(b) *Hardship waiver.* The PBGC may grant a waiver based upon a showing of substantial hardship as provided in section 4007(b) of ERISA.

(c) *Reasonable cause waiver.* The PBGC may, upon any demonstration of reasonable cause, waive all or part of a late payment penalty charge.

(d) *Waiver on PBGC's own initiative.* The PBGC may, on its own initiative, waive all or part of a late payment penalty charge.

(e) *Grace period.* With respect to any PBGC bill for a premium underpayment, the PBGC will waive any late payment penalty charge accruing after the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Safe-harbor relief for certain large plans.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if fewer than 500 participants are reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(g) *Safe-harbor relief for plans that make minimum estimated payment.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i), the plan administrator pays at least the lesser of—

(1) 90% of the flat-rate premium due for the premium payment year; or

(2) 100% of the flat-rate premium that would be due for the premium payment year if the number of participants for that year were the lesser of—

(i) The number of participants for whom premiums were required to be paid for the plan year preceding the premium payment year; or

(ii) The number of participants reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(h) *Reported participant count.* For purposes of paragraphs (f) and (g)(2)(ii) of this section, the number of participants reported for the plan year preceding the premium payment year is the number of participants last reported under this part to the PBGC (for the plan

year preceding the premium payment year) by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i).

Issued in Washington, DC, this 19th day of November, 1999.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 99-30775 Filed 11-24-99; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[SPATS No. IA-005-FOR]

Iowa Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, an amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa added revegetation success guidelines to its program. These guidelines include revegetation success standards, statistically valid sampling procedures and techniques for determining revegetation success on areas being restored to various land uses, and normal husbandry practices. Iowa intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: November 26, 1999.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463-6460. Internet: jcoleman@mcrwg.osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Iowa Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments

V. Director's Decision
VI. Procedural Determinations

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program, effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5885). You can find later actions on the Iowa program at 30 CFR 915.10, 915.15, and 915.16.

II. Submission of the Proposed Amendment

By letter dated September 28, 1998 (Administrative Record No. IA-441), Iowa sent us an amendment to its program under SMCRA. Iowa sent the amendment in response to our letter dated August 1, 1986 (Administrative Record No. IA-280), that we sent to Iowa under 30 CFR 732.17(c). The amendment concerns guidelines for revegetation success and normal husbandry practices, entitled "Revegetation Success Standards and Statistically Valid Sampling Techniques."

We announced receipt of the amendment in the October 14, 1998, **Federal Register** (63 FR 55025) and invited public comment on its adequacy. The public comment period closed November 13, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to Iowa's revegetation success guidelines concerning the definition for "prime farmland"; plant species for recreational and wildlife areas; reference areas; minimum planting arrangements for recreational, wildlife, and forested lands; and control area adjustments of prime farmland yields. We also identified concerns with Iowa's guidelines for normal husbandry practices. We notified Iowa of these concerns by electronic mail on November 19, 1998 (Administrative Record No. IA-441.6). On August 3, 1999, Iowa sent us a revised amendment dated April 1999 (Administrative Record No. IA-441.7).

Based upon Iowa's revisions to its amendment, we reopened the public comment period in the October 8, 1999, **Federal Register** (64 FR 54840). The public comment period closed on October 25, 1999.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15

and 732.17, are our findings concerning the amendment.

A. Revegetation Success Standards and Statistically Valid Sampling Techniques for Mined Lands in Iowa

Iowa submitted revegetation success guidelines that describe the standards and procedures for determining revegetation success on reclaimed mined lands in Iowa. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program. Iowa developed its revegetation success guidelines to satisfy this requirement. In some cases, Iowa's revegetation success guidelines supplement and clarify the performance standards for revegetation success contained in the Iowa program, but they do not replace or change any of them.

The guidelines include revegetation success standards and statically valid sampling techniques for measuring revegetation success of reclaimed pastureland; cropland; industrial, commercial, or residential lands; recreational, wildlife, or forested lands; and remined lands in accordance with Iowa's counterparts to the Federal regulations at 30 CFR 816.116 and 817.116. The guidelines also include revegetation success standards and statically valid sampling techniques for restoring soil productivity of prime farmland soils in accordance with Iowa's counterparts to the Federal regulations at 30 CFR 823.15. Iowa's standards, criteria, and parameters for revegetation success reflect the extent of cover, species composition, and soil stabilization required in the Federal regulations at 30 CFR 816.111 and 817.111. As required by the Federal regulations at 30 CFR 816.116(a)(2) and (b), 817.116(a)(2) and (b), and 823.15, Iowa's revegetation success standards include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking suitable to the approved postmining land uses. Iowa's guidelines specify the procedures and techniques to be used for sampling, measuring, and analyzing vegetation parameters.

Ground cover, production, and stocking suitable to the approved postmining land uses, except prime farmland, are considered equal to the approved success standard when they are not less than 90 percent of the success standard. The average

production of crops for prime farmland soils must equal or exceed the average production of the same crops for the same or similar unmined prime farmland soils. Sampling techniques for measuring success use a 90-percent statistical confidence interval for all land uses. We found that use of these procedures and techniques will ensure consistent, objective collection of vegetation data.

For the above reasons, we find that, except as discussed in the following findings, the revegetation success standards and statically valid sampling techniques for measuring revegetation success contained in Iowa's revegetation success guidelines satisfy the requirements of 30 CFR 816.116(a)(1), 817.116(a)(1), and 823.15.

1. Reference Areas

Section III, part F of Iowa's revegetation success guidelines contains requirements for the use of reference areas for establishing revegetation success standards. Permittees can use data from reference areas for direct comparison only when Iowa has approved the use of reference areas in the permit. When reference areas are used, the reference areas will serve as the data set for establishing the revegetation success standard. The reclaimed areas will be directly compared to the revegetation success standard developed from the reference area production yields for the same growing season. Management of all of the reference areas and the reclaimed areas must be identical in all aspects. Part F contains examples of the criteria that must be met on both the reclaimed and reference areas. Reference areas must be within a five-mile radius of the permit site, unless the Division approves a site outside of the five-mile radius that has special features which cannot be found closer to the permit site. Part F also contains additional prime farmland reference area requirements, including examples of calculations for developing corn and soybean productivity success standards.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed in order to evaluate the appropriate vegetation parameters of ground cover, production, and stocking. The Federal regulations at 30 CFR 816.116(b) and 817.116(b) allow the use of reference areas for determining revegetation success. The Federal regulation at 30 CFR 823.15(b)(2) requires that permittees measure soil productivity on a representative sample or on all of the

mined and reclaimed prime farmland areas using the reference crop determined under 30 CFR 823.15(b)(6). It also requires that they use a statistically valid sampling technique at a 90-percent or greater statistical confidence level as approved by the regulatory authority in consultation with the U.S. Natural Resources Conservation Service (NRCS). The Federal regulation at 30 CFR 823.15(b)(4) requires that permittees manage the reclaimed areas in the same manner as nonmined prime farmland in the surrounding area. The Federal regulations at 30 CFR 823.15(b)(7) allow the use of reference crop yields of representative local farms in the surrounding area for determining revegetation success for prime farmland, with concurrence by the NRCS. Iowa submitted a fax dated July 21, 1997, from the NRCS as evidence of consultation when developing its revegetation success guidelines for reference areas (Administrative Record No. IA-441.5). We find that Iowa's requirements for reference areas are consistent with the Federal requirements at 30 CFR 816.116(a)(2) and (b), 817.116(a)(2) and (b), and 823.15(b)(2), (4), and (6). Therefore, we are approving the requirements in section III, part F. However, the fax did not contain specific concurrence by the NRCS for Iowa's use of the current yield records of reference areas for measuring productivity on prime farmland, as required by the Federal regulations at 30 CFR 823.15(b)(7). Because Iowa did not submit evidence of concurrence by the NRCS, as required by the Federal regulations, we are not approving the use of reference areas for determining success of productivity on prime farmland areas. We are requiring Iowa to submit evidence of concurrence by the NRCS before it allows permittees to use reference area revegetation success standards for prime farmland. We are approving Iowa's guidelines on reference areas for all other applicable land uses.

2. Prime Farmland

Section IV, part A contains the revegetation success standards for prime farmland. Section IV, part G contains a method for adjusting the average prime farmland reference crop yield for adverse or beneficial climatic conditions.

a. Section IV, part A, provides that in order to establish revegetation success on prime farmland soils, the production of corn, soybeans, or a combination of corn and soybeans must produce yields equal to or greater than the yields of the same crops in similar unmined prime

farmland soils for three years of the five-year responsibility period. Corn and soybeans are the most common deep-rooted prime farmland crops in Iowa. The Division will consider restoration of prime farmland soil productivity achieved each year that the average yield during the measurement period exceeds or equals the average yield for the same prime farmland soil map units as provided in the County Soil Map Unit Yield Data tables for that county. These tables were developed from a U. S. Department of Agriculture-Natural Resources Conservation Service State Soil Survey Database. Part A.1 contains the method of determining the average yield of corn or soybean productivity using the County Soil Map Unit Yield Data tables located in Appendices 1 through 4. Part A.1 includes examples of how to calculate the corn and soybean success standards for prime farmland soils. At part A.2, Iowa also allows permittees to use prime farmland reference area yield data instead of the County Soil Map Unit Yield Data to prove productivity. Permittees would calculate corn or soybean productivity revegetation success standards from the prime farmland reference area yield data using the methods contained in part A.1.

The Federal regulations at 30 CFR 823.15(b)(7) allow permittees to prove restoration of prime farmland soil productivity in two ways. At 30 CFR 823.15(b)(7)(i), the permittee can use the current yield records of representative local farms in the surrounding area (reference areas) to prove productivity, with concurrence by the NRCS. At 30 CFR 823.15(b)(7)(ii), the permittee can use the average county yields recognized by the USDA, which have been adjusted by the NRCS for local yield variation. Iowa submitted a fax dated July 21, 1997, from the NRCS as evidence of consultation when developing its revegetation success guidelines for prime farmland (Administrative Record No. IA-441.5). We find that Iowa's requirements for revegetation and restoration of prime farmland soil productivity are consistent with the Federal requirements at 30 CFR 823.15(b)(7). Therefore, we are approving the requirements in section IV, parts A and A.1. However, in section IV, part A.2, Iowa proposed to use reference areas. The evidence submitted by Iowa did not contain specific concurrence by the NRCS for Iowa's use of the current yield records of reference areas for measuring productivity on prime farmland, as required by 30 CFR 823.15(b)(7)(i). Because Iowa did not submit evidence

of concurrence by the NRCS, we are not approving Iowa's use of reference areas for determining success of productivity on prime farmland areas. As discussed in Finding A.1, we are requiring Iowa to submit evidence of concurrence by the NRCS before allowing permittees to use reference area revegetation success standards for measuring productivity on prime farmland.

b. Section IV, parts A.1(a) and (b) allow permittees to adjust average yield values for weather conditions by one of two methods. Part A.1(a) allows the permittee to use control areas to adjust the County Soil Map Unit Yield Data in accordance with the requirements of section IV, part G. Part A.1(b) allows the permittee to get written concurrence from the NRCS to adjust the calculated County Soil Map Unit Yield Data to reflect a one year disease, pest, or weather induced variation during a specific growing season. Section IV, part G contains the requirements and methods for control area adjustments of prime farmland revegetation success standards developed from the County Soil Map Unit Yield Data. Control areas must contain one or more of the soil map units which exist in the reclaimed tract. The control area data is used to develop a climatic correction factor. The correction factor is used to adjust the revegetation success standards developed for prime farmlands for yield variations caused by adverse or beneficial climatic conditions during the crop year. Permittees can use control areas to develop a revegetation success standard adjusted for climatic condition only when the Division approves its use in the permit for that site. The control area must receive the same management as the reclaimed area. If the Division approves the use of control areas, the permittee must use the control area climatic correction factor in all production years within the responsibility period, whether it increases or decreases the revegetation success standards.

The Federal regulations at 30 CFR 823.15(b)(8) provide that the permittee may adjust the average reference crop yield for disease, pest, and weather-induced seasonal variations, with the concurrence of the NRCS. Therefore, we are approving Iowa's provision at section IV, part A.1(b) that requires the permittee to get written concurrence from the NRCS to adjust the calculated County Soil Map Unit Yield Data corn or soybean productivity revegetation success standards for disease, pest, or weather-induced seasonal variations. However, Iowa did not provide evidence that the NRCS concurred with Iowa's provisions at section IV, part G

concerning the methods used to adjust the County Soil Map Unit Yield Data for climatic conditions using control areas. Therefore, we are not approving Iowa's provisions at section IV, part G that contain the requirements and methods for adjusting prime farmland revegetation success standards using control areas. Our decision also makes the provision that allows the use of control areas at section IV, part A.1(b) moot. We are requiring Iowa to either remove section IV, part G from its revegetation success guidelines or submit evidence that the NRCS concurs with this provision.

3. Recreational, Wildlife, and Forested Lands

Section IV, part E contains the revegetation success standards for recreational areas, wildlife areas, and forested lands. The permittee must first meet all of the general erosion control and ground cover requirements of section III, part A and the general revegetation requirements of section III, part C for these land uses. Once the Permittee has documented that all of the criteria in these two sections has been met, the reclaimed permit site must achieve 90 percent vegetative cover density for a minimum of two years. Tree and shrub survival must be measured by counting live and healthy trees and shrubs. All trees and shrubs counted must have been in place for a minimum of two years and must have at least one-third of their height in live crown. At the time of counting trees or shrubs to determine if their survival meets the revegetation success standard, 80 percent of the original number of trees and shrubs planted per acre must be alive and must have been in place for three years. There must be a minimum of 400 live trees or shrubs per acre of land under a forested land use, including recreation or wildlife land use areas where woody plants are used, for purposes of achieving revegetation success. The Division will require the permittee to document the time of planting of all trees and shrubs on the permit. The permittee must tag all trees and shrubs planted with permanent markers which indicate the planting date. The permittee is responsible for assuring that the markings are permanent and will remain legible during the period of responsibility. Any tree having tags which are illegible or appear to have been tampered with will not count towards meeting the revegetation success standard for forest lands. Iowa submitted two appendices that are referenced in its guidelines for these land uses. Appendix 5 lists the recommended tree planting species in

Iowa. This appendix was developed by using lists of tree planting species obtained from the Iowa Department of Natural Resources and the Iowa State University Forestry Extension. Appendix 8 contains the recommended wildlife and recreation planting species in Iowa. This appendix was also developed from information provided by the Iowa Department of Natural Resources and the Iowa State University Forestry Extension. Iowa submitted a letter dated October 21, 1996, from the Iowa Department of Natural Resources as evidence of consultation with the State agency responsible for the administration of forestry and wildlife programs when developing its guidelines for recreational, wildlife, and forested lands (Administrative Record No. IA-441.5).

The Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) for fish and wildlife habitat, recreation, shelter belts, or forest products require that permittees determine success of vegetation on the basis of tree and shrub stocking and vegetative ground cover. They also require that:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a programwide or a permit-specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

We find that Iowa's revegetation success standards for recreational, wildlife, and forested lands at section IV, part E are no less effective than the requirements of the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), with two exceptions. First, Iowa's guidelines do not contain any planting arrangement provisions for these land uses as required by 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). Second, Iowa did not submit any documentation to prove that the State agencies responsible for the administration of forestry and wildlife programs approved its minimum stocking provisions as required by 30

CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). Therefore, we are requiring Iowa to either add planting arrangement provisions for recreational, wildlife, and forested land to its guidelines and obtain program-wide concurrence from the State agencies responsible for the administration of forestry and wildlife programs or add a provision to its guidelines that requires permit-specific concurrence for planting arrangements from the State agencies responsible for the administration of forestry and wildlife programs. We are also requiring Iowa to either obtain program-wide concurrence for its minimum stocking provisions or add a provision to its guidelines that requires permit-specific concurrence for minimum stocking from the State agencies responsible for the administration of forestry and wildlife programs.

4. Sampling Procedures and Techniques

Section V of Iowa's revegetation success guidelines contain sampling procedures and techniques to determine productivity for corn, soybeans, oats, wheat, and forage crops; to determine ground cover percentage; and to determine if trees and shrubs meet minimum density standards. With one exception, we find that Iowa's sampling procedures and techniques are statistically valid at a 90 percent or greater statistical confidence level as required by the Federal regulations at 30 CFR 816.116(a) (1) and (2), 817.116(a) (1) and (2), and 823.15(a)(2). Section V, part A.2, which contains the grain sampling technique for test plot harvesting, does not specify how the permittee is to obtain the dry weight of the test plot grain samples. The dry weight is used in a calculation to determine the moisture percentage for each test plot sample. Therefore, we are requiring Iowa to revise its revegetation success guidelines at section V, part A.2 by adding a provision that specifies the standard method that permittees are to use for obtaining the dry weight of test plot grain samples.

B. Normal Husbandry Practices

Iowa also proposed guidelines relating to normal husbandry practices that may be used without restarting the responsibility period. Section III, part H contains requirements for rill and gully repair; terrace repair and maintenance; riprap repair and maintenance; land smoothing and reseeding; and liming, fertilizing, and interseeding. Rill and gully erosion may be addressed within the permit or partial permit area without restarting the responsibility period only if repairs are completed using normal

husbandry practices. If the repair work requires augmented seeding, fertilization, or irrigation, the period of responsibility will restart. Normal husbandry practices do not include any temporary erosion control structures, such as silt fencing, straw, or hay bale dikes. Part H.1 specifies that the State will consider as normal husbandry practices any terrace repairs and maintenance required due to: (1) Rainfall events that exceed their designed capacities; (2) sediment deposition into a terrace flow line during the first year or two after the initial terrace construction and seeding that exceed the designed sediment storage capacity of the terrace; and (3) differential settling that impacts the flow line of the terrace. Part H.1 includes a listing of the types of terrace repair and maintenance options that the State will consider as normal husbandry practices. In part H.2, the State considers riprap repair and maintenance on ditches and structures due to storm events that exceed the maximum design standard as normal husbandry practices. Part H.2 includes a listing of the types of riprap repair and maintenance practices that will be considered normal husbandry practices. Part H.3 provides that normal husbandry practices can include limited land smoothing and reseeded as long as: (1) the individual areas are no larger than one acre in size and (2) the cumulative acreage is no greater than 10 percent of the entire permit or partial area. At part H.4, Iowa will consider applications of lime and fertilizer and interseeding to be normal husbandry practices when they meet specified conditions. For lime and fertilizer applications, the permittee must submit the original weight tickets for the applications at the times specified in section III, part B.3. For interseeding, the permittee must submit the original seed tickets at the times specified in section III, part B.3. Part H.4(a) and (b) provide, respectively, that lime and fertilizer applications must be made based on soil test recommendations for the appropriate crop or vegetation. Before any lime and fertilizer applications, the permittee must submit to the Division the original copies of the soil test recommendations and a map of the permit areas indicating where each soil sample was taken. If subsequent submittals of lime and fertilizer weight tickets prove that actual applications were in excess of the soil test recommendations, the Division will restart the responsibility period. Interseeding will be considered a normal husbandry practice based on the criteria listed in part H.4(c). This criteria

includes: (1) interseeding of a legume on the third year of a grass/legume vegetative cover; (2) interseeding of a single species that failed to germinate due to unfavorable climate conditions on half or more of the permit area; and (3) interseeding of a species due to excessive winter kill.

The Federal regulations at 30 CFR 816.116(c)(4) for surface mining operations and 817.116(c)(4) for underground mining operations allow the regulatory authority to approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, under specified conditions. The regulatory authority must obtain prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices that can be expected to continue as part of the postmining land use or that discontinuance of the practices after the responsibility period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. In the September 7, 1988, preamble for the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4), we discussed the type of documentation that the regulatory authority must submit to support its proposed normal husbandry practices (53 FR 34641). The regulatory authority must submit documentation that demonstrates that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands. We will consider, on a practice-by-practice basis, the documentation supporting each practice proposed by a regulatory authority as a normal husbandry practice. The documentation must include conservation practice guidelines or agronomy guidelines and fact sheets for the management of unmined lands in the applicable State. The guidelines and fact sheets could be those distributed by the NRCS or other organizations with similar expertise in management of a State's natural resources, including agricultural lands.

Iowa submitted a fax dated July 21, 1997, from the NRCS as evidence that Iowa consulted with the NRCS when developing its normal husbandry practice guidelines (Administrative Record No. IA-441.5. Iowa also

submitted a letter dated December 16, 1996, from the Iowa State University, Department of Agronomy, as additional evidence of consultation when developing its normal husbandry practices. However, Iowa did not submit actual NRCS conservation practice guidelines or Iowa State University agronomy guidelines or fact sheets to support its proposed normal husbandry practices. Therefore, we find that Iowa has not adequately demonstrated that its proposals for rill and gully repair; terrace repair and maintenance; riprap repair and maintenance; land smoothing and reseeded; and liming, fertilizing, and interseeding of areas disturbed by mining in Iowa are normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land uses of the disturbed areas. We are requiring Iowa to either remove its guidelines for normal husbandry practices at section III, part H or submit documentation that support the proposed normal husbandry practices.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record Nos. IA-441.1 and IA-441.9). On October 5, 1999, the Mine Safety and Health Administration sent us a letter stating that it had no comments on the amendment (Administrative Record No. IA-441.10).

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. IA-441.1 and IA-441.9). The EPA did not respond to our requests.

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. On October 5, 1998, and September 28, 1999, we requested comments on Iowa's amendment (Administrative Record Nos. IA-441.1 and IA-441.9), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve, with certain exceptions and additional requirements, the amendment as sent to us by Iowa on September 28, 1998, and as revised and sent to us by Iowa on August 3, 1999.

With the requirement that Iowa further revise its revegetation success guidelines, we do not approve, as discussed in: findings No. A.1 and A.2.a, the use of reference areas for determining success of productivity on prime farmland areas; finding No. A.2.b., section IV, part G, concerning the requirements and methods for use of control areas to adjust the County Soil Map Unit Yield Data for climatic conditions; and finding No. B, section III, part H, concerning normal husbandry practices.

With the requirement that Iowa further revise its revegetation success guidelines, we approve, as discussed in finding No. A.3, section IV, part E, concerning revegetation success standards for recreational, wildlife, and forested lands; finding No. A.4, section V, concerning sampling procedures and techniques for ground cover, stocking, and production.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 915, which codify decisions concerning the Iowa program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Iowa to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly,

30 CFR 732.17(a) requires that any change to an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Iowa program, we will recognize only the statutes, regulations and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Iowa of only such provisions.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 10, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 915 is amended as set forth below:

PART 915—IOWA

1. The authority citation for part 915 continues to read as follows:

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

2. Section 915.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
September 28, 1998	November 26, 1999	Revegetation Success Guidelines dated April 1999 (partial approval).

3. Section 915.16 is amended by adding paragraphs (a) through (e) to read as follows:

§ 915.16 Required program amendments.

(a) Before Iowa allows the use of reference areas for determining success of productivity on prime farmland as proposed at section III, part F and section IV, part A.2 of its revegetation success guidelines, Iowa must submit for OSM approval evidence that the U.S. Natural Resources Conservation Service concurs with these provisions.

(b) By May 25, 2000, Iowa must either remove the guidelines for normal husbandry practices from section III, part H of its April 1999 revegetation success guidelines or submit for OSM approval documentation that demonstrates each practice is a normal husbandry practice within the region for unmined lands having land uses similar to the approved postmining land uses of areas disturbed by mining in Iowa.

(c) By May 25, 2000, Iowa must either remove section IV, part G, which contains the requirements and methods for control area climatic adjustments to the prime farmland average yields provided in the County Soil Map Unit Yield Data tables, from its April 1999 revegetation success guidelines or submit for OSM approval evidence that the U.S. Natural Resources Conservation Service concurs with this provision.

(d) By May 25, 2000, Iowa must amend its revegetation success guidelines at:

(1) Section IV, part E by either adding planting arrangement provisions for recreational, wildlife, and forested lands and obtaining program-wide concurrence for the provisions from the State agencies responsible for the administration of forestry and wildlife programs or adding a provision that requires permit-specific concurrence for minimum planting arrangements from the State agencies responsible for the administration of forestry and wildlife programs.

(2) Section IV, part E by either obtaining program-wide concurrence for its minimum stocking provisions or adding a provision that requires permit-specific concurrence for minimum stocking from the State agencies responsible for the administration of forestry and wildlife programs.

(e) By May 25, 2000, Iowa must add a provision to section V, Part A.2 of its revegetation success guidelines that specifies the standard method that permittees are to use for obtaining the dry weight of test plot grain samples.

[FR Doc. 99-30677 Filed 11-24-99; 8:45 am]
BILLING CODE 4310-05-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99-5C]

Notice and Recordkeeping for Non-subscription Digital Transmissions

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim rule amendment.

SUMMARY: The Copyright Office is extending the date by which a non-interactive, non-subscription service currently making digital transmissions of sound recordings must file an initial notice of digital transmission with the Copyright Office from October 15, 1999, to December 1, 1999.

EFFECTIVE DATE: November 26, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

The Digital Performance Right in Sound Recordings Act of 1995, Public Law 104-39, 109 Stat. 336, created a statutory license that allowed an eligible subscription service to perform publicly a sound recording by means of digital audio transmissions, provided that the service adheres to the terms of the license and complies with the notice and recordkeeping regulations promulgated by the Librarian of Congress. 17 U.S.C. 114(f)(2) (1995). Three years later with the passage of the Digital Millennium Copyright Act of 1998 ("DMCA"), Congress expanded the scope of this license to include nonexempt, non-subscription transmission services and two preexisting satellite digital audio radio services.

Prior to the passage of the DMCA, the Copyright Office published regulations to govern how a subscription service was to provide notice to the copyright owners of the sound recordings and maintain specific records documenting the use of these works. See 63 FR 34289 (June 24, 1998). Under these regulations, each service had to file an initial notice of digital transmission with the Licensing Division of the Copyright Office. 37 CFR 201.35. The deadline for filing this notice was structured to allow a service to file its notice either before it commenced operation, or in the case of a service already making transmissions prior to the publication of the rule, within 45 days of the effective date of the regulation.

These filing requirements, however, did not allow a service newly eligible to make use of the license under the DMCA to make a timely filing of its initial notice of digital transmission. Therefore, the Office proposed an amendment to—201.35(f) which extended the date for filing an initial notice to October 15, 1999, in the case of those services operating under the expanded license. 64 FR 42316 (August 4, 1999). The proposed amendment was unopposed, and the Office adopted the change as a final interim regulation on September 20, 1999. 64 FR 50758 (September 20, 1999).

Subsequently, the National Association of Broadcasters ("NAB") filed a petition with the Copyright Office, seeking an extension of the October 15 deadline for filing the initial notices to December 1, 1999. NAB made this request because it believed that many potentially affected parties were unaware of the need to file an initial notice by the October 15, 1999, date, and consequently, missed the filing deadline. See 64 FR 59140 (November 2, 1999). Since that date, the Copyright Office has received several hundred initial notices from non-subscription services that are currently operating under the section 114 license and expects additional filings to continue. Thus, it appears that many of the potentially affected parties were unaware of the rule change that set a date certain by which these services had to file an initial notice of digital transmission of sound recordings.

In recognition of the apparent breakdown in the process to disseminate the information regarding