

**List of Subjects in 30 CFR Part 915**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 915**

[IA-011-FOR]

**Iowa Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposes revisions to rules about inspections and enforcement. Iowa intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Iowa program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t., September 12, 2002. If requested, we will hold a public hearing on the amendment on September 9, 2002. We will accept requests to speak at a hearing until 4 p.m., c.d.t., on August 28, 2002.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours,

Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

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

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281-6147.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463-6460. Internet: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Iowa Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Iowa Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior 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 also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

**II. Description of the Proposed Amendment**

By letter dated June 14, 2002 (Administrative Record No. IA-447), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to a letter dated June 17, 1997 (Administrative Record No. IA-440), that we sent to Iowa in accordance with 30 CFR 732.17(c). Below is a summary of the changes proposed by Iowa. The full text of the program amendment is

available for you to read at the locations listed above under **ADDRESSES**.

Iowa proposes to revise its program at Part 7, Rule 27-40.71(207), at 27 Iowa Administrative Code, Chapter 40 to incorporate by reference 30 CFR 840.11, as in effect on July 1, 2001. Currently, Iowa's provision incorporates by reference 30 CFR 840.11, as in effect on July 1, 1992.

**III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [IA-011-FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463-6460.

*Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public review in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on August 28, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### **IV. Procedural Determinations**

#### *Executive Order 12630—Takings*

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

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

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

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

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a)

and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### *Executive Order 13132—Federalism*

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

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

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

#### *National Environmental Policy Act*

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

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

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

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

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

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 915**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 2002.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

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**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 943**

[SPATS No. TX-048-FOR]

**Texas Regulatory Program**

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions to a previously proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern corrections of incorrect reference citations and the addition of two sentences to the proposed definition of "valid existing rights (VER)." Texas intends to revise its program to be consistent with the corresponding Federal regulations.

**DATES:** We will accept written comments until 4 p.m., c.d.t., August 28, 2002.

**ADDRESSES:** You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Texas program, the amendment and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P. O. Box 12967, Austin, Texas

78711-2967, Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. Internet: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

**SUPPLEMENTARY INFORMATION:****I. Background on the Texas Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \* ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

**II. Discussion of the Proposed Amendment**

By letter dated July 25, 2001 (Administrative Record No. TX-653.02), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. TX-653), that we sent to Texas under 30 CFR 732.17(c). Texas proposed to amend Title 16, Texas Administrative Code, Chapter 12.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48396). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 22, 2001.

During our review of the amendment, we identified incorrect reference citations and a concern regarding Texas' proposed definition of "valid existing rights." We notified Texas of these concerns by email dated September 24, 2001 (Administrative Record No. TX-

653.04). By letters dated October 22, 2001, and June 5, 2002 (Administrative Record Nos. TX-653.05 and TX-653.06, respectively), Texas sent us additional explanatory information and revisions to its program amendment.

Texas corrected the incorrect reference citations that we identified. The state also submitted a revision for its proposed definition of "valid existing rights" found at section 12.3(187). In paragraph (A) of this definition, Texas proposed to add two sentences so that the definition reads as follows:

(A) Property rights demonstration. Except as provided in subparagraph (C) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of § 12.71(a) of this title or § 134.022 of the Act. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

**III. Public Comment Procedures**

We are reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

**Written Comments:** If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the administrative record comments delivered to an address other than the one listed above (see **ADDRESSES**).

**Electronic Comments:** Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. TX-048-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received