

Dated: March 18, 2004.
Margaret H. McFarland,
Deputy Secretary.
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA-013-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 to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 1992, version to the July 1, 2002, version. 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.s.t., April 26, 2004. If requested,

we will hold a public hearing on the amendment on April 19, 2004. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on April 9, 2004.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Charles E. Sandberg, 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.

Charles E. Sandberg, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460, Fax: (618) 463-6470. Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281-5321.

FOR FURTHER INFORMATION CONTACT: Charles E. Sandberg, Mid-Continent Regional Coordinating Center. Telephone: (618) 463-6460.

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 February 24, 2004 (Administrative Record No. IA-448), 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 June 17, 1997, letter and an August 23, 2000, letter (Administrative Record Nos. IA-440 and IA-444, respectively) 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**.

A. Adoptions by Reference of 30 CFR Part 700 to End Revised as of July 1, 2002

Iowa proposes to update its adoption by reference of applicable sections of 30 CFR part 700 to End from the July 1, 1992, version to the July 1, 2002, version and to revise terms and cross-references, as required. The sections of Iowa's coal mining rules that are being revised in this manner are listed in the table below.

27 Iowa Administrative Code chapter 40, coal mining rules	Topic
27-40.1(1), 40.1(4)	Authority and scope.
27-40.3(207)	General.
27-40.4(207), 40.4(2), 40.4(3)	Permanent regulatory program and exemption for coal extraction incidental to the extraction of other minerals.
27-40.5(207)	Restrictions on financial interests of State employees.
27-40.6(207)	Exemptions for coal extraction incident to government-financed highway or other constructions.
27-40.7(207)	Protection of employees.
27-40.11(207)	Initial regulatory program.
27-40.12(207)	General performance standards—initial program.
27-40.13(207)	Special performance standards—initial program.
27-40.21(207), 40.21(4), 40.21(5), 40.21(6)	Areas designated by an Act of Congress.
27-40.22(207), 40.22(2)	Criteria for designating areas as unsuitable for surface coal mining operations.
27-40.23(207)	State procedures for designating areas unsuitable for surface coal mining operations.
27-40.30(207), 40.30(1), 40.30(4)	Requirements for coal exploration.

27 Iowa Administrative Code chapter 40, coal mining rules	Topic
27—40.31(207), 40.31(1), 40.31(2), 40.31(3), 40.31(4), 40.31(5), 40.31(6), 40.31(7), 40.31(8), 40.31(9), 40.31(13), 40.31(14), 40.31(15).	Requirements for permits and permit processing.
27—40.32(207), 40.32(1), 40.32(2), 40.32(4)	Revision or amendment; renewal; and transfer, assignment, or sale of permit rights.
27—40.33(207)	General content requirements for permit applications.
27—40.34(207), 40.34(2), 40.34(3)	Permit application—minimum requirements for legal, financial, compliance, and related information.
27—40.35(207)	Surface mining permit applications—minimum requirements for information on environmental resources.
27—40.36(207)	Surface mining permit applications—minimum requirements for reclamation and operation plan.
27—40.37(207), 40.37(4)	Underground mining permit applications—minimum requirements for information on environmental resources.
27—40.38(207), 40.38(2), 40.38(3)	Underground mining permit applications—minimum requirements for reclamation and operation plan.
27—40.39(207)	Requirements for permits for special categories of mining.
27—40.41(207)	Permanent regulatory program—small operator assistance program.
27—40.51(207)	Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.
27—40.61(207), 40.61(4)	Permanent program performance standards—general provisions.
27—40.62(207)	Permanent program performance standards—coal exploration.
27—40.63(207), 40.63(9)	Permanent program performance standards—surface mining activities.
27—40.64(207)	Permanent program performance standards—underground mining activities.
27—40.65(207)	Special permanent program performance standards—auger mining.
27—40.66(207)	Special permanent program performance standards—operations on prime farmland.
27—40.67(207)	Permanent program performance standards—coal preparation plants not located within the permit area of a mine.
27—40.71(207)	State regulatory authority—inspection and enforcement.
27—40.73(2)g	Cessation orders.
27—40.73(4)d	Suspension or revocation of permits.
27—40.74(207), 40.74(9)	Civil penalties.
27—40.75(207)	Individual civil penalties.
27—40.81(207)	Permanent regulatory program requirements—standards for certification of blasters.
27—40.82(207)	Certification of blasters.
27—40.92(8)	Contested cases.

B. Definitions

1. At 27—40.4(9), Iowa proposes to remove its definition of “previously mined area” and to adopt the Federal definition of “previously mined area” by reference.

2. At 27—40.4(11), Iowa proposes to delete the definition for “violation, failure or refusal” at 30 CFR 701.5 and insert in its place, the following definition:

“Violation, failure, or refusal,” means—

(1) A violation of a condition of an approved permit pursuant to the Iowa program or an enforcement action pursuant to Iowa Code section 207.14, or

(2) A failure or refusal to comply with any order issued under Iowa Code section 207.14 or any order incorporated in a final decision issued by the administrator, except an order incorporated in a decision issued under subrule 40.74(7) or rule 27—40.7(207).

C. Exemptions for Coal Extraction Incident to Government—Financed Highway or Other Construction

Iowa proposes to remove 27—40.6(2), which deleted the words “250 tons”

from 30 CFR 707.12 and inserted the words “50 tons.”

D. Requirements for Permits and Permit Processing

At 40.31(12), Iowa added the following paragraph to 30 CFR 773.17:

(h) The permittee shall ensure and the permit shall contain specific conditions requiring that, as a condition of the permit, the permittee shall not, except as permitted by law, willfully resist, prevent, impede, or interfere with the division or any of its agents in the performance of their duties.

E. Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

Iowa proposes to delete 27—40.35(3), which deleted from 30 CFR 779.22(a)(1) the words “A map” and inserted the words “A map at a scale of 1:2400 or larger or an aerial photo.”

F. Permanent Program Performance Standards—Surface Mining Activities

At 27—40.63(6), Iowa added a reference to its “Revegetation Success

Standards and Statistically Valid Sampling Techniques” dated April 1999, as approved on December 27, 2001.

G. Permanent Program Performance Standards—Underground Mining Activities

1. At 27—40.64(4), Iowa added a reference to its “Revegetation Success Standards and Statistically Valid Sampling Techniques” dated April 1999, as approved on December 27, 2001.

2. Iowa proposes to remove 27—40.64(6), which deleted from 30 CFR 817.121(c)(2) the phrase “To the extent required under applicable provisions of State law.”

H. Individual Civil Penalties

At 27—40.75(2), Iowa removed its definition of “Violation, failure or refusal” and added it at 27—40.4(11).

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 comments to us 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.

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.s.t. on April 9, 2004. 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

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

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

National Environmental Policy Act

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

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 9, 2004.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04-6734 Filed 3-24-04; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV-101-FOR]

West Virginia Regulatory Program

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

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

SUMMARY: We are announcing our proposal to remove a required program amendment from the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The required program amendment concerns stocking standards for commercial forestry and forestry postmining land use for operations with a variance from the requirements to restore approximate original contour (AOC). The proposed removal of the required amendment is intended to acknowledge actions taken by the State to render the West Virginia program no less effective than the Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on April 26, 2004. If requested, we will hold a public hearing on the amendment on April 19, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 9, 2004.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia 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 Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347-7158. Fax: (304) 347-7158.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0510.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291-4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

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

I. Background on the West Virginia 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 the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30