

embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Judge or Chief Administrative Law Judge for appropriate action on the remaining issues. If all the parties, the Settlement Judge and the Chief Administrative Law Judge agree, the Settlement Judge may be retained as the Hearing Judge.

(g) *Non-reviewability.*

Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of any Judge and any decision by the Settlement Judge to terminate settlement proceedings under this section is not subject to review, appeal, or rehearing.

**Subpart M—[Amended]**

■ 17. In Subpart M all references to “E–Z Trail” are revised to read “Simplified Proceedings.”

■ 18. In Section 2200.202, paragraphs (a)(2) and (b) are revised to read as follows:

**§ 2200.202 Eligibility for Simplified Proceedings.**

(a) \* \*

(2) An aggregate proposed penalty of not more than \$20,000,

\* \* \* \* \*

(b) Those cases with an aggregate proposed penalty of more than \$20,000, but not more than \$30,000, if otherwise appropriate, may be selected for Simplified Proceedings at the discretion of the Chief Administrative Law Judge.

**PART 2204—[AMENDED]**

■ 1. The authority citation for Part 2204 continues to read as follows:

**Authority:** 29 U.S.C. 661(g); 5 U.S.C. 504(c)(1)

**§ 2204.105 [Amended]**

■ 2. In Section 2204.105, paragraph (f) is removed.

■ 3. In Section 2204.302 is amended by revising paragraph (a) and removing paragraph (d) to read as follows:

**§ 2204.302 When an application may be filed.**

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the period for seeking appellate review expires.

\* \* \* \* \*

Dated: April 27, 2005.

**W. Scott Railton,**  
*Chairman.*

Dated: April 27, 2005.

**Thomasina V. Rogers,**  
*Commissioner.*

Dated: April 27, 2005.

**James M. Stephens,**  
*Commissioner.*

[FR Doc. 05–8744 Filed 5–2–05; 8:45 am]

**BILLING CODE 7600–01–M**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 915**

**[Docket No. IA–014–FOR]**

**Iowa Regulatory Program**

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposed revisions to its April 1999 revegetation success guidelines titled, “Revegetation Success Standards and Statistically Valid Sampling Techniques.” Iowa intends to revise its program in response to required program amendments.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *MCR\_AMEND@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the 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 State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary

pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the 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 conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning Iowa’s program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

**II. Submission of the Amendment**

By letter dated December 27, 2004 (Administrative Record No. IA–449), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to required program amendments codified at 30 CFR 915.16(a) and (c).

We announced receipt of the amendment in the February 8, 2005, **Federal Register** (70 FR 6606). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 10, 2005. We received comments from one Federal agency.

During our review of the amendment, we identified concerns regarding the yield data sources for revegetation success standards. We notified Iowa of these concerns by e-mail on March 10, 2005 (Administrative Record No. IA–449.5). Iowa responded by telephone on March 11, 2005 (Administrative Record Number IA–449.6). Because additional information presented by Iowa merely clarified certain provisions of its amendment, we did not reopen the public comment period.

**III. OSM’s Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

Iowa currently has required program amendments codified at 30 CFR 915.16(a) and (c). The required amendment codified at 30 CFR 915.16(a) calls for Iowa to submit for our approval evidence that the U.S. Natural Resources Conservation Service (NRCS) concurs with its provisions to allow 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. At 30 CFR 915.16(c), Iowa is required to either remove Section IV., Part G from its revegetation success guidelines or submit for our approval evidence that the NRCS concurs with the provisions in Part G. Part G, pertaining to control areas, contains the requirements and methods for making climate-based adjustments to the prime farmland average yields shown in the County Soil Map Unit Yield Data tables.

In response to the above required program amendments, Iowa proposed to amend its April 1999 revegetation success guidelines titled, "Revegetation Success Standards and Statistically Valid Sampling Techniques." More specifically, Iowa proposed to delete, from the guidelines, all text related to prime farmland reference areas in Section III., Part F (Reference Areas) and Section IV., Part A.2 (Prime Farmland—Reference Area Corn and Soybean Productivity Standards). Also, Iowa proposed to delete Section IV., Part G (Control Area Adjustments of Prime Farmland and Revegetation Success Standards). Following is an explanation of the portions of the revegetation success guidelines that Iowa proposed to amend.

#### A. Section III. General Requirements and Exclusions of Revegetation

##### Part F. Reference Areas

Currently, the introductory paragraph applies to all land uses. Iowa proposed to revise the introductory paragraph to specify that data from reference areas can be used for direct comparison "for all applicable land uses except for prime farmland" only when the Division has approved the use of reference areas in the permit. Iowa also proposed to delete paragraph F.1., including example numbers one through three.

#### B. Section IV. Revegetation Success Standards

##### 1. Part A. Prime Farmland

a. Iowa proposed to delete the fourth paragraph in the introductory language under Part A that reads as follows:

The use of reference areas to develop these prime farmland productivity standards is not recommended due to the difficulty of obtaining a reference area with similar prime farmland soil map units over which the Permittee can retain absolute control of the management practices. Reference area management practices must be identical to the management practices of the reclaimed prime farmland area. (See the criteria listed in III. General Requirements, F. Reference Areas above for definition of identical management practices.) The use of reference areas for development of row crop

production standards shall be allowed only when they are approved as a part of the Permit for the site containing the reclaimed prime farmland. The development of reference area corn and soybean productivity standards is detailed in III. General Requirements, F. Reference Areas above.

b. In what is currently paragraph A.1., Iowa proposed to (1) revise the introductory language to paragraphs A.1.a and b, (2) delete paragraph A.1.a, and (3) remove the paragraph designation from paragraph b. The newly revised language will read as follows:

These calculated County Soil Map Unit Yield Data corn and soybean productivity revegetation success standards will remain constant for the entire period of responsibility. These standards can only be adjusted if the permittee receives written concurrence from the USDA-NRCS to adjust the calculated County Soil Map Unit Yield Data corn and/or soybean productivity revegetation success standards to reflect a one year disease, pest, or weather induced variation in that county during the specific growing season in question. The Division must also concur that this variation actually impacted the Permit site.

c. Iowa proposed to delete paragraph A.2. pertaining to Reference Area Corn and Soybean Productivity Standards and to remove the number one (1) designation from what is currently paragraph A.1.

##### 2. Part G. Control Area Adjustments of Prime Farmland Revegetation Success Standards

Iowa proposed to delete Part G in its entirety.

We are approving Iowa's proposed amendments as discussed above because the State is deleting from its revegetation success guidelines provisions that cannot be approved without concurrence from the NRCS. We are also removing the required amendments at 30 CFR 915.16(a) and (c).

#### 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) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record No. IA-449.1). The NRCS responded on January 18, 2005 (Administrative Record No. IA-449.3), that it recommended that where the term "County Soil Map Unit Yield

Data" is used it should be revised to more accurately reflect the source and location of the data. The NRCS suggested that the term should read, "provided in the USDA-Natural Resources Conservation Service (NRCS) Field Office Technical Guide, Section II, County Soil Map Unit Yield Data Tables." We forwarded the NRCS's comments to Iowa. We will address the issue of yield data sources for revegetation success standards, as appropriate, in our future oversight of the Iowa program.

##### Environmental Protection Agency (EPA) Concurrence and Comments

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

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IA-449.1). EPA did not respond to our request.

##### State Historic 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 January 5, 2005, we requested comments on Iowa's amendment (Administrative Record No. IA-449.1), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve the amendment Iowa sent us on December 27, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

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

### *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 regulations did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 29, 2005.

**Charles E. Sandberg,**

*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
12/27/2004	5/3/2005	Section III.F and Section IV.A and G of Iowa's April 1999 Revegetation Success Standards and Statistically Valid Sampling Techniques.

### § 915.16 [Amended]

■ 3. Section 915.16 is amended by removing and reserving paragraph (a) and by removing paragraphs (c) through (e).

[FR Doc. 05-8732 Filed 5-2-05; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 917

[KY-248-FOR]

#### Kentucky Regulatory Program

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

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

**SUMMARY:** We are approving an amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted examples of common husbandry practices in response to a required amendment.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260-8400. Telefax number: (859) 260-8410.

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Kentucky 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 State 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 Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

#### II. Submission of the Proposed Amendment

By letter dated July 29, 2004, Kentucky sent us information pertaining to its program ([KY-248-FOR], administrative record No. KY-1634) under SMCRA (30 U.S.C. 1201 *et seq.*) in response to a required amendment at 30 CFR 917.16(i). The required amendment resulted from OSM's decision on June 9, 1993, to not approve proposed changes to 405 KAR (Kentucky Administrative Regulations) 16/18:200 Sections 1(7)(a), (7)(a)1 through 5, and 1(7)(d) that were submitted to OSM on June 28, 1991 (58 FR 32283). The finding stated, in part, that Kentucky (unlike other States) had not submitted any administrative record information to demonstrate that its proposed practices were normal husbandry practices within Kentucky. In its submission letter, Kentucky stated, in part, that its administrative regulations at 405 KAR 16/18:200 Sections 1(7)(a)1 through 5, and Sections 1(7)(b) and (d) "provide general direction on common remedial practices that will not extend the bond liability period" and "While these regulations establish a basic level of remedial activity that may occur, they do not identify many of the husbandry practices that may be commonly used in this region." Kentucky included guidance documents from the University of Kentucky College of Agriculture Cooperative Extension Service that identify the common husbandry practices that Kentucky would allow, subject to the limitations in 405 KAR 16:200/18:200 Section

1(7)(a) and (d). Kentucky also submitted information regarding similar husbandry practices approved and used in Tennessee, Ohio and Virginia. Finally, Kentucky provided examples of common practices that would be encountered on lands in Kentucky and would not restart or extend the bond liability period. The examples pertained to the following land uses: hayland, pastureland, forestland, commercial forestry, fish and wildlife, commercial, industrial, residential or recreational. We note that some of these examples do not pertain to the husbandry practices listed in 405 KAR 16/18:200 Section 1(7)(a) and (d) so they are not considered in this amendment.

We announced receipt of the proposed amendment in the September 14, 2004, **Federal Register** (69 FR 55373), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 14, 2004. We received one comment from the U.S. Fish and Wildlife Service.

#### III. OSM's Findings

Following is the finding we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. The regulation at 405 KAR 16/18:200 Section 1(7)(a) allows quarter acres or less of discrete areas to be reseeded without restarting the responsibility period if the areas meet one of the five exemptions and the total of these areas is no more than three percent of the permit acreage. The Federal rules at 30 CFR part 816 and 817.116(c)(4) allow the performance of normal husbandry practices during the period of responsibility, without restarting that period, if the State and OSM approve such practices and such practices can be expected to continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent revegetation success. We find that the three percent overall size limitation will not reduce the probability of permanent revegetation success because the Federal rules at 30 CFR part 816 and 817.116(a)(2) provide that ground cover,