Arkansas'' and by adding on the same line, in the ''Name'' column, ''Rogers Municipal Airport.'';

d. By removing, in the ''Location'' column, ''Medford, Oregon'' and by removing on the same line, in the ''Name'' column, ''Rogue Valley International Airport.''; and

e. By removing, in the ''Location'' column, ''Terre Haute, Indiana'' and by removing on the same line, in the ''Name'' column, ''Hulman Regional Airport.''.

Dated: April 27, 2005.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[FR Doc. 05–8659 Filed 5–2–05; 8:45 am]

BILLING CODE 4820–02–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2200 and 2204

Revisions to Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

DATES: These revised rules will effect on August 1, 2005. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work an injustice, in which event the present rules apply.

FOR FURTHER INFORMATION CONTACT: Patrick Moran, Deputy General Counsel, Occupational Safety and Health Review Commission, 1120 20th St. NW., Ninth Floor, Washington, DC 20036–3457, Phone Number: (202) 606–5410.

SUPPLEMENTARY INFORMATION: On March 4, 2005, the Commission published in the **Federal Register** several proposed changes to its rules of procedure. 70 FR 10574 (March 4, 2005). The Commission found the comments it received in response to that proposal to be very helpful. As a result, several proposed changes have been modified and one proposed change has been deleted. The Commission thanks those who responded for their time and interest, and the quality of their comments.

1. Service, Filing and Notice

The Commission proposed revising section 2200.5 to give its Judges the discretion to require a party to respond more quickly to a motion or order filed shortly before the hearing where the normal response time would not expire until after the hearing has commenced. The Commission has modified its original proposal to make it clear that the Judge may enlarge or shorten any time period contained in the rules upon motion of a party with good cause shown or upon the Judge's own motion. One commentator suggested that the rule be further amended to give a Judge the discretion to dispense with written follow-ups to oral motions for extensions of time. The Commission declines to follow this suggestion. The Commission believes that it is important for the record to thoroughly document the motions and the Judge's disposition of the motions. The small burden imposed on the parties by requiring such follow-up written motions is outweighted by the interest in maintaining a complete record of the proceedings.

The Commission also proposed amending section 2200.7 to allow for the electronic service of documents when all parties consent in writing and the certificate of service of the electronic transmission states such consent and the method of transmission. It proposed amending section 2200.8 to allow for the electronic filing of documents. These proposals were well received by the commentators, although one commentator suggested that electronic filing not be made mandatory since access to computers and the Internet is not yet universal. The Commission agrees and, while encouraging the use of electronic filing, will continue to leave it optional for the foreseeable future.

In response to a commentator's request, the Commission would clarify that, even where the parties have not consented to the electronic filing of all documents, they may still consent to the electronic filing of individual documents.

Another commentator noted that section 2200.8 did not specifically contemplate that electronically filed documents would be made available on-line and that, if such documents are not electronically available, there was no purpose for the redaction of certain information set forth in section 2200.8(g)(5). The Commission has decided against making electronically filed documents available on-line at this time, as the Commission does not have the equipment or resources to make such documents available on-line. Moreover, because electronic filing remains optional, and only certain documents may be electronically filed, the limited on-line availability of documents could confuse and even mislead interested parties. Regarding the need to redact certain information, the Commission recognizes that despite the resources it has devoted to closing all known security gaps within its own systems, the security of documents filed through the Internet remains a concern. Therefore, it believes that good practice dictates that potentially sensitive information be redacted from electronically filed documents.

That same commentator also opined that section 2200.8(g)(6) had a typographical error in that the rule should list those items that the Commission wanted to receive with electronic filings, rather than suggesting, as the proposed rule did, that it specifically did not want those items. The Commission stresses that this was not a typographical error and that, indeed, the Commission wants to underscore that those items listed in the rule should not be sent with any electronic filing.

The commentator also suggested that section 2200.8(g)(7) be revised to eliminate the requirement for an /s/ if a graphical duplicate of a signature is included. The Commission fails to see how the requirement imposes any sort of burden on the parties and will adopt the rule as proposed.

The Commission also proposed to amend section 2200.8(f) by eliminating the 3-day grace period for mailing documents after they have been faxed. The Commission has reconsidered the rule and now is of the view that a faxed document can serve as an original and that a follow-up mailing is unnecessary. Technology has advanced to the point where faxed documents are generally much clearer than they were just a few years ago. Where there is a problem with the clarity of a tax, the Commission will contact the sending party and request that the document be re-faxed, mailed, or electronically filed.

2. Practice Before the Commission

The Commission received a number of comments regarding its proposal to amend section 2200.22 to restrict practice before the Commission to attorneys. Based on the responses received from those commenting, the Commission has decided to withdraw the proposal. Nevertheless, the Commission remains concerned about the quality of representation provided by non-legal representatives. It will continue to monitor the situation and explore different methods to help small

businesses and other parties receive the quality of representation they deserve when appearing before the Review Commission.

3. Prehearing Conferences and Orders

The Commission proposed amending section 2200.51 to give the Judge the discretion, rather than require the Judge, to consult with all attorneys and any unrepresented parties and entered a scheduling order that limits the time (i) to join other parties and to amend the pleadings; (ii) to file and hear motions; and (iii) to complete discovery. We received two comments, both in opposition to the proposal. Both commentators argued that mandatory consultation promotes the orderly scheduling of pretrial matters, and promotes the efficient use of time and resources. The Commission appreciates these concerns, but believes that, while in most instances, Judges will consult with the parties, leaving these matters to the Judge's discretion gives the Judge the flexibility needed to exercise better control over the docket.

4. General Provisions Concerning Discovery

The Commission's proposed changes to its discovery rule at section 2200.52 received several comments. The proposal to amend section 2200.52(a) by explicitly making Federal Rule of Civil Procedure 26(a), which sets forth a lengthy list of required disclosures, inapplicable to Commission proceedings, was favorably received by the commentators.

The Commission's proposal to incorporate the contents of section 2200.11 in the discovery rule was also favorably received. Two commentators, however, were concerned that section 2200.52(d)(1), as proposed, would impose an undue burden on the parties, insofar as it could be read to require a party to produce a lengthy list of supporting documents when first claiming that requested information is privileged. The commentators noted that these matters are often resolved amicably among the parties and suggested that supporting documentation be required only in response to either an order from the Judged or a motion to compel. We agree with these comments and have amended the rule accordingly. The Commission notes that, as adopted, the rule continues to eliminate the current 15-day response period for claims of privilege. The Commission remains of the view that the Judge should have the discretion and flexibility to determine on a case-by-case basis how long the parties need to respond to claims of privilege.

The Commission has also amended the proposed rule by deleting the specific reference to the ''deliberative process privilege.'' Upon reconsideration the Commission recognizes the ''deliberative process privilege'' and believes that it should be treated as would any other privilege.

A commentator also pointed out an apparent inconsistency between the proposed rule at section 2200.52(j) and current section 2200.54(a) and (b), insofar as the former states that requests for admission not be filed with the judge while the latter requires such a filing. We thank the commentator for the observation and we have amended sections 2200.54(a) and (b) to be consistent with the new rule at section 2200.52(j).

5. Oral Argument

The Commisssion proposed amending its rules on oral argument, set forth in section 2200.95, to allow for the written transcription of oral arguments and to require that any party who files a motion for oral argument must demonstrate why oral argument would facilitate resolution of issues before the Commission. No comments were received on this proposal, and we have adopted the rule as proposed.

6. Settlement Part

The Commission proposed several changes to section 2200.120, the Settlement Part. The commentators responded favorably to the Commission's proposal to lower the threshold for cases eligible for the Mandatory Settlement Part, from penalties of $200,000 to those of $100,000. One commentator objected to assigning a case to mandatory settlement negotiations only after the completion of discovery. The commentator observed that the longer a case proceeds, the more the parties have invested in the case, and the less likely settlement becomes. While the Commission sees merit in these views, it remains of the opinion that, generally, settlement negotiations in complex cases are not fruitful until the parties complete discovery and can more fully assess the strengths and weaknesses of their case. The Commission observes, however, that there is nothing in the rule to prevent the parties from asking the Judge to begin the settlement procedure at an earlier stage of the proceedings.

Several commentators also objected to explicitly granting the Settlement Judge the authority to hold a mini-trial. The commentators observed that in some cases, the expense of such a proceeding would negate the primary reason for seeking settlement. It was also pointed out that, as proposed, the rule left unanswered many questions regarding the conduct of the mini-trial. Upon reconsideration, the Commission finds substantial merit in these comments and has omitted any reference to a ''mini-trial'' in the rule as adopted; it has instead substituted a provision that allows the judge, with the consent of the parties, to conduct such other settlement proceedings as may aid in the settlement of the case.

The Commission has also redrafted the confidentiality provisions of the Settlement Part at section 2200.120(d)(3). First, the Commission stresses that the confidentiality provisions apply only to matters divulged as a result of participation in the Settlement Part, and do not apply to matters properly obtained during discovery. For that matter, the Commission does not believe that the protective orders allowed by section 2200.52(e) are particularly relevant to the Settlement Part and the reference to that rule has been eliminated. Instead, the Judge is authorized to issue appropriate orders to protect confidentiality, which may or may not include matters set forth in section 2200.52(e).

The Commission has also decided to make several changes to its original proposal. For example, the Commission determined that the proposed period a case can remain in mandatory settlement proceedings was unduly long, especially given that discovery would have been completed prior to the initiation of settlement proceedings. Therefore, the initial period a case can be in mandatory settlement proceedings has been reduced from 120 days to 60 days. Also, the Commission clarified section 2200.120(a) to make it clear that a party can only prevent a case from entering voluntary settlement proceedings. As previously written, section 2200.120 could have been interpreted as giving a party a veto over cases entering both voluntary and mandatory settlement proceedings. While the scope of these changes has resulted in the rule being largely redrafted, we have here noted the significant substantive changes from the original proposal.

7. Simplified Proceedings

The commentators were supportive of the Commission's proposal to raise the penalty limit for cases eligible for Simplified Proceedings from a minimum of $10,000 to $20,000, and commensurately raising the penalty

limit for cases that the Chief Administrative Law Judge has discretion to assign to Simplified Proceedings from a maximum of $20,000 to $30,000.

8. Equal Access to Justice Act

The Commission proposed amending its rules implementing the Equal Access to Justice Act (EAJA) by (1) eliminating section 2204.105(f), which mandated that the net worth of an applicant be aggregated with its affiliates, and (2) revising section 2204.302, which sets out the time from which a final order is calculated for purposes of determining when an EAJA application must be filed. These amendments were proposed to bring the Commission's rules in closer conformity to the developing case law. No comments were received on these proposals and, except for a minor technical revision to section 2204.302, the proposed amendments are adopted.

9. Other Changes

Because of the revisions, certain non-substantive technical changes to existing rules have been made. For example, sections 2200.32 and 105(a) have revised cross-references, while section 2200.106 has a corrected zip code for the Commission.

List of Subjects

29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure.

29 CFR Part 2204

Administrative practice and procedure. Equal access to justice.

Text of Amendment

■ For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Parts 2200 and 2204 of the Code of Federal Regulations as follows:

PART 2200—[AMENDED]

■ 1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g).

■ 2. Section 2200.5 is revised to read as follows:

§ 2200.5 Extension of time.

The Commission or Judge on their own initiative or, upon motion of a party, for good cause shown, may enlarge or shorten any time prescribed by these rules or prescribed by an order. All such motions shall be in writing but, in exigent circumstances in a case pending before a Judge, an oral request may be made and thereafter shall be followed by a written motion filed with the Judge within 3 working days. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, in exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

■ 3. In Section 2200.7, paragraphs (c) and (g) are revised to read as follows:

§ 2200.7 Service and notice.

* * * * *

(C) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail at the last known address, by electronic transmission, or by personal delivery. Service is deemed effected at the time of mailing (if by mail), at the time of receipt (if by electronic transmission), or at the time of personal delivery (if by personal delivery). Facsimile transmission of documents and documents sent by an overnight delivery service shall be considered personal delivery. Legibility of documents served by facsimile transmission is the responsibility of the serving party. Documents may be se3rved by electronic transmission only when all parties consent in writing and the certificate of service of the electronic transmission states such consent and the method of transmission. All parties must be electronically served. Electronic service must be accomplished by following the requirements set forth on the Commission's Web site (*http://www.OSHRC.gov.*).

* * * * *

(g) *Service on unrepresented employees.* In the vent that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION in its rules of Procedure. Notice of intent to participate must be filed no later than 10 days before the hearing. Any notice of intent to participate should be sent to: Occupational Safety and Health, Review Commission, Office of the Executive Secretary, One Lafayette Centre, 1120 20th Street, NW., Suite 980, Washington, DC 20036–3457. All pleadings relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

* * * * *

■ 4. Section 2200.8 is revised to read as follows:

§ 2200.8 Filing.

(a) *What to file.* All papers required to be served on a party or intervenor, except for those papers associated with part of a discovery request under Rules 52 through 56, shall be filed either before service or within a reasonable time thereafter.

(b) *Where to file.* Prior to assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at One Lafayette Centre, 1120 20th Street, NW., Suite 980, Washington, DC 20036–3457. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(c) *How to file.* Unless otherwise ordered, filings may be accomplished by postage-prepaid first class mail, personal delivery, or electronic transmission or facsimile transmission.

(d) *Number of copies.* Unless otherwise ordered or stated in this part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and eight copies of a document shall be filed.

(e) *Filing date.* (1) Except for the documents listed in paragraph (e)(2) of this section, filing is effective upon mailing, if by mail, upon receipt by the Commission, if filing is by personal delivery, overnight delivery service, facsimile transmission or electronic transmission.

(2) Filing is effective upon receipt for petitions for interlocutory review (§ 2200.73(b)), petitions for discretionary review (§ 2200.91), and EAJA applications (§ 2204.301).

(3) Counsel and the parties shall have sole responsibility for ensuring that the document is timely received by the Commission.

(f) *Facsimile transmissions.* (1) Any document may be filed with the Commission or its Judges by facsimile transmission. Filing shall be deemed completed at the time that the facsimile transmission is received by the Commission or the Judge. The filed facsimile shall have the same force and effect as an original.

(2) All facsimile transmissions shall include a facsimile of the appropriate certificate of service.

(3) It is the responsibility of parties desiring to file documents by the use of facsimile transmission equipment to utilize equipment that is compatible with facsimile transmission equipment operated by the Commission. Legibility of the transmitted documents is the responsibility of the serving party.

(g) *Electronic filing.* (1) Where all parties consent to electronic service and electronic filing, a document may be filed by electronic transmission with the Commission and its judges. The certificate of service accompanying the document must state that the other parties consent to filing by electronic transmission. The electronic transmission shall be in the manner specified by the Commission's Web site (*http://www.OSHRC.gov*).

(2) A document filed in conformance with the these rules constitutes a written document for the purpose of applying these rules, and a copy printed by the Commission and placed in the case file shall have the same force and effect as the original.

(3) A certificate of service shall accompany each document electronically filed. The certificate shall set forth the dates and manner of filing and service. It is the responsibility of the transmitting party to retain records showing the date of transmission, including receipts.

(4) A party that files a document by an electronic transmission shall utilize equipment and software that is compatible with equipment operated by the Commission and shall be responsible for the legibility of the document.

(5) Information that is sensitive but not privileged shall be filed as follows:

(i) If Social Security numbers must be included in a document, only the last four digits of that number shall be used;

(ii) If names of minor children must be mentioned, only the initials of that child shall be used;

(iii) If dates of birth must be included, only the year shall be used;

(iv) If financial account numbers must be filed, only the last four digits of these numbers shall be used;

(v) If a personal identifying number, such as a driver's license number must be filed, only the last four digits shall be used. Parties shall exercise caution when filing medical records, medical treatment records, medical diagnosis records, employment history, and individual financial information, and shall redact or exclude certain materials unnecessary to a disposition of the case.

(6) A transmittal letter shall not be filed electronically or by other means when a document is transmitted noting:

(i) The transmittal of a document.

(ii) The inclusion of an attachment:

(iii) A request for a return receipt; or

(iv) A request for additional information concerning the filing.

(7) The signature line of any document shall include the notation ''/s/'' followed by the typewritten name or graphical duplicate of the handwritten signature of the party representative filing the document. Such representation of the signature shall be deemed to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized.

(8) Privileged information shall not be filed electronically. Privileged information or information that is asserted by any party to be privileged shall not be filed electronically.

§ 2200.11 [Removed]

■ 5. Section 2200.11 is removed and reserved.

■ 6. Section 2200.32 is revised to read as follows:

§ 2200.32 Signing of pleadings and motions.

Pleadings and motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. The signature of a representative or party also constitutes a certificate by him that he has read the pleading, motion, or other paper, that to the best of his knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is signed in violation of this rule, such signing part or its representative shall be subject to the sanctions set forth in § 2200.101 or § 2200.104. A signature by a party representative constitutes a representation by him that he understands that the rules and orders of the Commission and its Judges apply equally to attorney and non-attorney representatives.

§ 2200.41 [Removed]

■ 7. Section 2200.41 is removed and reserved.

■ 8. In Section 2200.51, paragraph (a)(1) is revised to read as follows:

§ 2200.51 Prehearing conferences and others.

(a) *Scheduling conference.* (1) The Judge may, upon his or her discretion, consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30 days after the filing of the answer, enter a scheduling order that limits the time:

(i) To join other parties and to amend the pleadings;

(ii) To file and hear motions; and

(iii) To complete discovery.

* * * * *

■ 9. In Section 2200.52, paragraph (a)(1) and paragraphs (d) through (l) are revised and a new paragraph (m) is added to read as follows:

§ 2200.52 General provisions governing discovery.

(a) *General.* (1) *Methods and limitations.* In conformity with these rules, any party may, without leave of the Commission or Judge, obtain discovery by one or more of the following methods:

(i) Production of documents or things or permission to enter upon land or other property for inspection and other purposes (§ 2200.53);

(ii) Requests for admission to the extent provided in § 2200.54; and

(iii) Interrogatories to the extent provided in § 2200.55. Discovery is not available under these rules through depositions except to the extent provided in § 2200.56. In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure, except that the provisions of Rule 26(a) of the Federal Rules of Civil Procedure do not apply to Commission proceedings.

* * * * *

(d) *Privilege.* (1) *Claims of privilege.* The initial claim of privilege shall specify the privilege claimed and the general nature of the material for which the privilege is claimed. In response to an order from Judge or the Commission, or in response to a motion to compel, the claim shall: Identify the information that would be disclosed; set forth the privilege that is claimed; and allege the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions, or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order or by a motion that the allegedly privileged information be received and the claim ruled upon in camera, that is, with the record and hearing room closed to the public, or *ex parte,* that is, without the participation of parties and their representatives. The judge may enter an order and impose terms and conditions on his or her examination of the claim as justice may require, including an order designed to ensure that the allegedly privileged information not be disclosed until after the examination is completed.

(2) *Upholding or rejecting claims of privilege.* If the Judge upholds the claim of privilege, the Judge may order and impose terms and conditions as justice may require, including a protective order. If the Judge overrules the claim, the person claiming the privilege may obtain as of right an order sealing from the public those portions of the record containing the allegedly privileged information pending interlocutory or final review of the ruling, or final disposition of the case, by the Commission. Interlocutory review of such an order shall be given priority consideration by the Commission.

(e) *Protective orders.* In connection with any discovery procedures and where a showing of good cause has been made, the Commission or Judge may make any order including, but not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the Commission or Judge;

(6) That a deposition after being sealed be opened only by order of the Commission or Judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or Judge.

(f) *Failure to cooperate; Sanctions.* A party may apply for an order compelling discovery when another party refuses or obstructs discovery. For purposes of this paragraph, an evasive or incomplete answer is to be treated as a failure to answer. If a Judge enters an order compelling discovery and there is a failure to comply with that order, the Judge may make such orders with regard to the failure as are just. The orders may issue upon the initiative of a Judge, after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party. The orders may include any sanction stated in Federal Rule of Civil Procedure 37, including the following:

(1) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(2) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed; and

(4) An order dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(g) *Unreasonable delays.* None of the discovery procedures set forth in these rules shall be used in a manner or at a time which shall delay or impede the progress of the case toward hearing status or the hearing of the case on the date for which it is scheduled, unless, in the interests of justice, the Judge shall order otherwise. Unreasonable delays in utilizing discovery procedures may result in termination of the party's right to conduct discovery.

(h) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (f) of this section shall be served upon the affected party by certified mail, return receipt requested.

(i) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be classed as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(i) The party knows that the response was incorrect when made; or

(ii) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

(j) *Filing of discovery.* Request for production or inspection under § 2200.53, request for admission under § 2200.54 and responses thereto, interrogatories under § 2200.55 and the answers thereto, and depositions under § 2200.56 shall be served upon other counsel or parties, but shall not be filed with the Commission or the Judge. The party responsible for service of the discovery material shall retain the original and become the custodian.

(k) *Relief from discovery requests.* If relief is sought under §§ 2200.101 or 2200.52(e), (f), or (g) concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers, or responses in dispute shall be filed with the Judge or Commission contemporaneously with any motion

filed under §§ 2200.101 or 2200.52(e), (f), or (g).

(l) *Use at hearing.* If interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion which might result in a final order on any claim, the portions to be used shall be filed with the Judge or the Commission at the outset of the hearing or at the filing of the motion insofar as their use can be reasonably anticipated.

(m) *Use on review or appeal.* When documentation of discovery not previously in the record is needed fro review or appeal purposes, upon an application and order of the Judge or Commission the necessary discovery papers shall be filed with the Executive Secretary of the Commission.

■ 10. In Section 2200.54, paragraphs (a) and (b) are revised to read as follows:

§ 2200.54 Request for admissions.

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve upon any other party written requests for admissions, for purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of fact. Each matter of which an admission is requested shall be separately set forth. The number of requested admissions shall not exceed 25, including subparts, without an order of the Commission or Judge. The party seeking to serve more than 25 requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions.

(b) *Response to requests.* Each matter is deemed admitted unless, within 30 days after service of the requests or within such shorter or longer time as the Commission or Judge may allow, the party to whom the requests are directed serves upon the requesting party a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or an objection, stating the detail the reasons therefor. The response shall be made under oath or affirmation and signed by the party or his representative.

* * * * *

■ 11. In Section 2200.90, paragraph (b)(3) is revised to read as follows:

§ 2200.90 Decisions of judges.

* * * * *

(b) *The judge's report.*

* * * * *

(3) *Correction of errors; Relief from default.* Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order, the Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record. If a Judge's report has been directed for review the decision may be corrected during the pendency of review with leave of the Commission. Until the Judge's report has been docketed by the Executive Secretary, the Judge may relieve a party of default or grant reinstatement under §§ 2200.101(b), 2200.52(f) or 2200.64(b).

* * * * *

■ 12. In Section 2200.95, paragraphs (a) and (i) are revised to read as follows:

§ 2200.95 Oral argument before the Commission.

(a) *When ordered.* Upon motion of any party, or upon its own motion, the Commission may order oral argument. Parties requesting oral argument must demonstrate why oral argument would facilitate resolution of the issues before the Commission. Normally, motions for oral argument shall not be considered until after all briefs have been filed.

* * * * *

(i) *Recording oral argument.* (1) Unless the Commission directs otherwise, oral arguments shall be electronically recorded and made part of the record. Any other sound recording in the hearing room is prohibited. Oral arguments shall also be transcribed verbatim. A copy of the transcript of the oral argument taken by a qualified court reporter, shall be filed with the Commission. The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it.

(2) Persons desiring to listen to the recordings shall make appropriate arrangements with the Executive Secretary. Any party desiring a written copy of the transcript is responsible for securing and paying for its copy.

(3) Error in the transcript of the oral argument may be corrected by the Commission on its own motion, on joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. Corrections will be made by hand with pen and ink and by the appending of an errata sheet.

* * * * *

■ 13. Section 2200.101 is revised to read as follows:

§ 2200.101 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either on the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default, or on the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this section. See § 2200.90(b)(3).

(c) *Discovery sanctions.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(f).

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (a) of this section shall be served upon the affected party by certified mail, return receipt requested.

■ 14. In Section 2200.105, paragraph (a) is revised to read as follows:

§ 2200.105 Ex parte communication.

(a) *General.* Except as permitted by § 2200.120 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

* * * * *

■ 15. Section 2200.106 is revised to read as follows:

§ 2200.106. Amendment to rules.

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be addressed to the Executive Secretary of the Commission at One Lafayette Centre,

1120 20th Street, NW., Suite 980, Washington, DC 20036–3457.

■ 16. Section 2200.120 is revised to read as follows:

§ 2200.120 Settlement procedure.

(a) *Voluntary Settlement.* (1) *Applicability and duration.* (i) This section applies only to notices of contests by employers, and to applications for fees under the Equal Access to Justice Act and 29 CFR Part 2204.

(ii) Upon motion of any party after the docketing of the notice of contest, or otherwise with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge may assign a case to a Settlement Judge for proceedings under this section. In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(2) *Length of voluntary settlement procedures.* The settlement procedures under this section shall be for a period not to exceed 45 days.

(b) *Mandatory settlement.* (1) *Applicability.* This section applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is $100,000 or greater.

(2) *Proceedings under this part.* (i) *Assignment of case and appointment of Settlement Judge.* Nothwithstanding any other provisions of these rules, upon the docketing of the notice of contest the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (b)(1) of this section. The Chief Administrative Law Judge shall appoint a Settlement Judge, who shall be a Judge other than the one assigned to hear and decide the case, except as provided in paragraph (f)(2) of this section.

(ii) *Discovery proceedings to be followed by settlement proceedings.* The Settlement Judge shall issue a discovery scheduling order and supervise all discovery proceedings. At the conclusion of discovery the Settlement Judge will conduct settlement proceedings during a period not to exceed 60 days. If, at the conclusion of the settlement proceedings the case has not been settled the Settlement Judge shall promptly notify the Chief Administrative Law Judge in accordance with paragraph (f) of this section.

(c) *Powers and duties of Settlement Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case and seek resolution of as many of the issues as is feasible.

(2) The Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue and my enter other orders as appropriate to facilitate the proceedings.

(3) In voluntary settlement proceedings the Judge may allow or suspend discovery during the settlement proceedings.

(4) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(5) The Judge may, with the consent of the parties, conduct such other settlement proceedings as may aid in the settlement of the case.

(d) *Settlement conference.* (1) *General.* The Settlement Judge shall convene and preside over conferences between the parties. Settlement conferences may be conducted telephonically or in person. The Judge shall designate a place and time of conference.

(2) *Participation in conference.* The Settlement Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or other wise to comply with the orders of the Settlement Judge or the refusal to cooperate fully within the spirit of this rule may result in the imposition of sanctions under § 2200.101.

(3) *Confidentiality of settlement proceedings.* All statements made and all information presented during the course of settlement proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Judge shall issue appropriate orders to protect confidentiality of settlement proceedings. The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or his representative during settlement proceedings except with the consent of that party. No evidence of statements or conduct in settlement proceedings under this section within the scope of Federal Rule of Evidence 408, no notes or other material prepared by or maintained by the Settlement Judge in connection with settlement proceedings, and no communications between the Settlement Judge and the Chief Administrative Law Judge in connection with settlement proceedings including the report of the Settlement Judge under paragraph (f) of this section, will be admissible in any subsequent hearing except by stipulation of the parties. Documents disclosed in the settlement proceeding may not be used in litigation unless obtained through appropriate discovery or subpoena. With respect to the Settlement Judge's participation in settlement proceedings, the Settlement Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(e) *Record of settlement proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Judge shall not file or cause to be filed in the official case record any material in his possession relating to these settlement proceedings, including but not limited to communications with the Chief Administrative Law Judge and his report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Judge.* (1) The Settlement Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at the conclusion of the settlement period or such time that he determines further negotiations would be fruitless. If the Settlement Judge has made such a determination and a settlement agreement is not achieved within 45 days for voluntary settlement proceedings or 60 days for mandatory settlement proceedings, the Settlement Judge shall then advise the Chief Administrative Law Judge in writing. The Chief Administrative Law Judge may then in his discretion allow an additional period of time, not to exceed 30 days, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Judge has not approved a full settlement, he shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders

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

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.,