

2. In paragraph (c)(2)(i), the language "A business" is removed, and "Except as otherwise provided in this paragraph (c), a business" is added in its place.

3. Paragraphs (c)(2)(iv), (c)(2)(v), (e)(3), and (e)(4) are added.

The additions read as follows:

**§ 301.7701-2 Business entities; definitions.**

(a) \* \* \* But see paragraphs (c)(2)(iv) and (v) of this section for special employment and excise tax rules that apply to an eligible entity that is otherwise disregarded as an entity separate from its owner.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) *Special rule for employment tax purposes*—(A) *In general.* Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

(B) *Example.* The following example illustrates the application of paragraph (c)(2)(iv) of this section:

*Example.* (i) LLC A is an eligible entity owned by individual A and is generally disregarded as an entity separate from its owner for federal tax purposes. However, LLC A is treated as an entity separate from its owner for purposes of subtitle C of the Internal Revenue Code. LLC A has employees and pays wages as defined in sections 3121(a), 3306(b), and 3401(a).

(ii) LLC A is subject to the provisions of subtitle C of the Internal Revenue Code and related provisions under 26 CFR subchapter C, Employment Taxes and Collection of Income Tax at Source, parts 31 through 39. Accordingly, LLC A is required to perform such acts as are required of an employer under those provisions of the Code and regulations thereunder that apply. All provisions of law (including penalties) and the regulations prescribed in pursuance of law applicable to employers in respect of such acts are applicable to LLC A. Thus, for example, LLC A is liable for income tax withholding, Federal Insurance Contributions Act (FICA) taxes, and Federal Unemployment Tax Act (FUTA) taxes. See sections 3402 and 3403 (relating to income tax withholding); 3102(b) and 3111 (relating to FICA taxes), and 3301 (relating to FUTA taxes). In addition, LLC A must file under its name and EIN the applicable Forms in the 94X series, for example, Form 941, "Employer's Quarterly Employment Tax Return," Form 940, "Employer's Annual Federal Unemployment Tax Return;" file with the Social Security Administration and furnish to LLC A's employees statements on Forms W-2, "Wage and Tax Statement;" and make timely employment tax deposits. See §§ 31.6011(a)-1, 31.6011(a)-3, 31.6051-1, 31.6051-2, and 31.6302-1 of this chapter.

(iii) A is self-employed for purposes of subtitle A, chapter 2, Tax on Self-Employment Income, of the Internal Revenue Code. Thus, A is subject to tax under section 1401 on A's net earnings from self-employment with respect to LLC A's activities. A is not an employee of LLC A for purposes of subtitle C of the Code. Because LLC A is treated as a sole proprietorship of A for income tax purposes, A is entitled to deduct trade or business expenses paid or incurred with respect to activities carried on through LLC A, including the employer's share of employment taxes imposed under sections 3111 and 3301, on A's Form 1040, Schedule C, "Profit or Loss for Business (Sole Proprietorship)."

(v) *Special rule for certain excise tax purposes*—(A) *In general.* Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply for purposes of—

(1) Federal tax liabilities imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Internal Revenue Code, or any floor stocks tax imposed on articles subject to any of these taxes;

(2) Collection of tax imposed by Chapter 33 of the Internal Revenue Code;

(3) Registration under sections 4101, 4222, and 4412; and

(4) Claims of a credit (other than a credit under section 34), refund, or payment related to a tax described in paragraph (c)(2)(v)(A)(1) of this section.

(B) *Example.* The following example illustrates the provisions of this paragraph (c)(2)(v).

*Example.* (i) LLC B is an eligible entity that has a single owner, B. LLC B is generally disregarded as an entity separate from its owner. However, under paragraph (c)(2)(v) of this section, LLC B is treated as an entity separate from its owner for certain purposes relating to excise taxes.

(ii) LLC B mines coal from a coal mine located in the United States. Section 4121 of chapter 32 of the Internal Revenue Code imposes a tax on the producer's sale of such coal. Section 48.4121-1(a) of this chapter defines a "producer" generally as the person in whom is vested ownership of the coal under state law immediately after the coal is severed from the ground. LLC B is the person that owns the coal under state law immediately after it is severed from the ground. Under paragraph (c)(2)(v)(A)(1) of this section, LLC B is the producer of the coal and is liable for tax on its sale of such coal under chapter 32 of the Internal Revenue Code. LLC B must report and pay tax on Form 720, "Quarterly Federal Excise Tax Return," under its own name and taxpayer identification number.

(iii) LLC B uses undyed diesel fuel in an earthmover that is not registered or required to be registered for highway use. Such use is an off-highway business use of the fuel. Under section 6427(l), the ultimate purchaser is allowed to claim an income tax credit or payment related to the tax imposed on diesel

fuel used in an off-highway business use. Under paragraph (c)(2)(v) of this section, for purposes of the credit or payment allowed under section 6427(l), LLC B is the person that could claim the amount on its Form 720 or on a Form 8849, "Claim for Refund of Excise Taxes." Alternatively, if LLC B did not claim a payment during the time prescribed in section 6427(i)(2) for making a claim under section 6427, § 1.34-1 of this chapter provides that B, the owner of LLC B, could claim the income tax credit allowed under section 34 for the nontaxable use of diesel fuel by LLC B.

\* \* \* \* \*

(e) \* \* \*

(3) Paragraph (c)(2)(iv) of this section applies with respect to wages paid on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**.

(4) Paragraph (c)(2)(v) of this section applies to liabilities imposed and actions first required or permitted in periods beginning on or after January 1 following the date these regulations are published as final regulations in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 05-20765 Filed 10-17-05; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 915**

[Docket No. IA-015-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 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 amend its rules regarding small operator assistance. Iowa intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA.

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 the amendment until 4 p.m., c.t., November 17, 2005. If requested, we will hold a public hearing on the amendment on November 14, 2005. We will accept requests to speak at a hearing until 4 p.m., c.t. on November 2, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. IA-015-FOR, by any of the following methods:

- E-mail: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

Include Docket No. IA-015-FOR in the subject line of the message.

- Mail/Hand Delivery: Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002.

- Fax: (618) 463-6470.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to 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, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Alton Field Division. Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460, E-mail: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following location: Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281-6147.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463-6460. E-mail: [IFOMAIL@osmre.gov](mailto:IFOMAIL@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

#### IV. Procedural Determinations

##### **I. Background on the Iowa Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

##### **II. Description of the Proposed Amendment**

By letter dated August 19, 2005 (Administrative Record No. IA-450), the Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (IDSC) sent us a copy of the coal mine rules it had adopted on March 30, 2005. Included in the adopted rules were changes to Iowa's rule at 27-40.41(207) regarding small operator assistance that we had not previously approved. Iowa proposed the changes in response to a required program amendment at 30 CFR 915.16(b).

##### *27-40.41(207) Permanent Regulatory Program—Small Operator Assistance Program*

Iowa proposes to add the following new subrules at rule 27-40.41(207):

##### *Subrule 40.41(3)*

Eligibility thresholds for annual production in tons at 30 CFR 795.6(a)(2) shall not apply until the same threshold at Iowa Code section 207.4(1)(d) has been amended from 100,000 tons to 300,000 tons.

##### *Subrule 40.41(4)*

Program services at 30 CFR 795.9(b)(3) through 795.9(b)(6) shall not apply until Iowa Code section 207.4(1)(d) has been amended to authorize these services.

##### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the changes to 27-40.41(207) satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve the changes, they will become part of the State program.

##### *Written Comments*

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

##### *Electronic Comments*

Please submit e-mail comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: Docket No. IA-015-FOR" and your name and return address in your e-mail message. If you do not receive a confirmation that we have received your Internet message, contact the Alton Field Division at (618) 463-6460.

##### *Availability of Comments*

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

##### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on November 2, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We

will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

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

#### *Public Meeting*

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

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

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

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

This rule is exempted from review by the Office of Management and Budget (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: September 8, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

[FR Doc. 05-20787 Filed 10-17-05; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 936

[Docket No. OK-030-FOR]

#### Oklahoma 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 Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposes revisions to rules concerning cross sections, maps, and plans; subsidence control; impoundments; revegetation success standards; roads; and review of decision not to inspect or enforce. Oklahoma intends to revise its program to provide additional safeguards, clarify ambiguities, and improve operational efficiency. This document gives the times and locations that the Oklahoma program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t. November 17, 2005. If requested, we will hold a public hearing on the amendment on November 14, 2005. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on November 2, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. OK-030-FOR, by any of the following methods:

- E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov). Include "Docket No. OK-030-FOR" in the subject line of the message.
- Mail/Hand Delivery: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.
- Fax: (918) 581-6419.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to review copies of the Oklahoma program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430, E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following location: Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 427-3859.

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

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Oklahoma 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, "\* \* \* 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 Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning the Oklahoma program and program amendments at 30 CFR 936.10, 936.15 and 936.16.

#### II. Description of the Proposed Amendment

By letter dated July 15, 2005 (Administrative Record No. OK-946.02), Oklahoma sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment to include the changes made at its own initiative. Below is a summary of the changes proposed by Oklahoma. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes or corrections of cross-references. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

*A. 460:20-25-11, and 460:20-29-11. Cross Sections, Maps, and Plans*

Oklahoma proposed to delete subsections (a)(11) that require permit applicants to include on cross sections, maps, and plans, sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.

*B. 460:20-31-13. Subsidence Control Plan*

Oklahoma proposed to revise subsection (a)(3) so that, for areas where unplanned subsidence is projected to be used, an underground mining permit application does not have to include a pre-subsidence survey of: (1) the condition of all non-commercial buildings or occupied residential dwellings and related structures thereto, or (2) the quantity and quality of all drinking, domestic, and residential water supplies within the permit and adjacent areas.