

handling in trial courts, subject to the limitations imposed by paragraph (c) of this section. United States Attorneys are hereby delegated the authority to take all necessary steps to protect the interests of the United States, without prior approval of the Assistant Attorney General, Civil Division, or his representations, subject to the limitations set forth in section 1(e) of this directive. Agencies may, however, if special handling is desired, refer these cases to the Civil Division. Also, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Civil Division should be consulted.

(1) Money claims by the United States, except claims involving penalties and forfeitures, where the gross amount of the original claim does not exceed \$1,000,000.

(2) Single family dwelling house foreclosures arising out of loans made or insured by the Department of Housing and Urban Development, the Veterans Administration and the Farmers Home Administration.

(3) Suits to enjoin violations of, and to collect penalties under, the Agricultural Adjustment Act of 1938, 7 U.S.C. 1376, the Packers and Stockyards Act, 7 U.S.C. 203, 207(g), 213, 215, 216, 222, and 228a, the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. 499c(a) and 499h(d), the Egg Products Inspection Act, 21 U.S.C. 1031 *et seq.*, the Potato Research and Promotion Act, 7 U.S.C. 2611 *et seq.*, the Cotton Research and Promotion Act of 1966, 7 U.S.C. 2101 *et seq.*, the Federal Meat Inspection Act, 21 U.S.C. 601 *et seq.*, and the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*

(4) Suits by social security beneficiaries under the Social Security Act, 42 U.S.C. 402 *et seq.*

(5) Social Security disability suits under 42 U.S.C. 423 *et seq.*

(6) Black lung beneficiary suits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 921 *et seq.*

(7) Suits by Medicare beneficiaries under 42 U.S.C. 1395ff.

(8) Garnishment actions authorized by 42 U.S.C. 659 for child support or alimony payments and actions for general debt, 5 U.S.C. 5520a.

(9) Judicial review of actions of the Secretary of Agriculture under the food stamp program, pursuant to the provisions of 7 U.S.C. 2022 involving retail food stores.

(10) Cases referred by the Department of Labor for the collection of penalties or for injunctive action under the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970.

(11) Cases referred by the Department of Labor solely for the collection of civil penalties under the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. 2048(b).

(12) Cases referred by the Interstate Commerce Commission to enforce orders of the Interstate Commerce Commission or to enjoin or suspend such orders pursuant to 28 U.S.C. 1336.

(13) Cases referred by the United States Postal Service for injunctive relief under the nonmailable matter laws, 39 U.S.C. 3001 *et seq.*

(b) Delegation to United States Attorneys. Upon the recommendation of the appropriate Director, the Assistant Attorney General, Civil Division may delegate to United States Attorneys suit authority involving any claims or suits where the gross amount of the original claim does not exceed \$5,000,000 where the circumstances warrant such delegations. United States Attorneys may compromise any case redelegated under this subsection in which the gross amount of the original claim does not exceed \$5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed \$1,000,000. United States Attorneys may close cases redelegated to them under this subsection only upon the authorization of the appropriate authorized person within the Department of Justice. All delegations pursuant to this subsection shall be in writing and no United States Attorney shall have authority to compromise or close any such delegated case or claim except as is specified in the required written delegation or in section 1(c) of this directive. The limitations of section 1(e) of this directive also remain applicable in any case or claim delegated hereunder.

(c) Cases not covered. Regardless of the amount in controversy, the following matters normally will not be delegated to United States Attorneys for handling but will be personally or jointly handled or monitored by the appropriate Branch or Office within the Civil Division:

(1) Civil actions in the Court of Federal Claims.

(2) Cases within the jurisdiction of the Commercial Litigation Branch involving patents, trademarks, copyrights, etc.

(3) Cases before the United States Court of International Trade.

(4) Any case involving bribery, conflict of interest, breach of fiduciary duty, breach of employment contract, or exploitation of public office.

(5) Any fraud or False Claims Act case where the amount of single damages, plus civil penalties, if any, exceeds \$1,000,000.

(6) Any case involving vessel-caused pollution in navigable waters.

(7) Cases on appeal, except as determined by the Director of the Appellate Staff.

(8) Any case involving litigation in a foreign court.

(9) Criminal proceedings arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Office of Consumer Litigation.

(10) Nonmonetary civil cases, including injunction suits, declaratory judgment actions, and applications for inspection warrants, and cases seeking civil penalties including but not limited to those arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Office of Consumer Litigation.

(11) Administrative claims arising under the Federal Tort Claims Act.

#### Section 5. Adverse Decisions

All final judicial decisions adverse to the Government involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult title 2 of the United States Attorney's Manual for procedures and time limitations. An appeal cannot be taken without approval of the Solicitor General. Until the Solicitor General has made a decision whether an appeal will be taken, the Government attorney handling the case must take all necessary procedural actions to preserve the Government's right to take an appeal, including filing a protective notice of appeal when the time to file a notice of appeal is about to expire and the Solicitor General has not yet made a decision. Nothing in the foregoing directive affects this obligation.

#### Section 6. Supersession

This directive supersedes Civil Division Directive No. 176-91 regarding redelegation of the Assistant Attorney General's authority in Civil Division cases to Branch Directors, heads of offices and United States Attorneys.

#### Section 7. Applicability

This directive applies to all cases pending as of the date of this directive and is effective immediately.

Approved: March 27, 1995.

**Frank W. Hunger,**

*Assistant Attorney General, Civil Division.*

Dated March 27, 1995.

**John R. Schmidt,**

*Associate Attorney General.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 915

#### Iowa Regulatory Program

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Iowa regulatory program (hereinafter referred to as the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa proposed revisions to rules pertaining to rulemaking petitions, definitions, permit processing, permit revisions, bonding, backfilling and grading, alternative enforcement, and individual civil penalties. The amendment is intended to revise the Iowa program to be consistent with the

corresponding Federal standards, to clarify ambiguities, and to improve operational efficiency.

**EFFECTIVE DATE:** April 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Telephone: (816) 374-6405.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Iowa Program**

On January 21, 1981, the Secretary of the Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

**II. Proposed Amendment**

By letter dated April 13, 1994, Iowa submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. IA-397). Iowa submitted the proposed amendment with the intent of satisfying the required program amendments codified at 30 CFR 915.6 (a) and (b), and at Iowa's own initiative to improve the operation of its program. The provisions of the Iowa Administrative Code (IAC) that Iowa proposed to revise were: IAC 27-40.3(207), 27-40.4(9), 27-40.31(14), 27-40.32(207), 27-40.51(7), 27-40.63(2), 27-40.74(3), and 27-40.75(2).

OSM announced receipt of the proposed amendment in the May 5, 1994, **Federal Register** (59 FR 23177), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. IA-402). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 6, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of IAC 27-40.32 (permit revisions), 27-40.51(7) (application for bond release), and 27-40.75(2) (individual civil penalties). OSM notified Iowa of the concerns by issue letter dated October 3, 1994 (Administrative Record No. IA-407).

Iowa responded in a letter dated November 8, 1994, by submitting a revised amendment (Administrative Record No. IA-408). Iowa proposed additional revisions to IAC 27-40.32 (permit revisions), 27-40.51(7) (bond release application), and 27-40.75(2) (individual civil penalties).

Based upon the revisions to the proposed program amendment submitted by Iowa, OSM reopened the public comment period in the November 23, 1994, **Federal Register** (59 FR 60341; Administrative Record No. IA-410). The public comment period ended on December 8, 1994.

**III. Director's Findings**

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Iowa on April 13, 1994, and as revised by it on November 8, 1994, is no less effective than the corresponding Federal regulations in meeting SMCRA's requirements. Accordingly, the Director approves the proposed amendment.

**1. Nonsubstantive Revisions to Iowa's Rules**

Iowa proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial and recodification changes (corresponding Federal regulation provisions are listed in parentheses):

- IAC 27-40.32(3)a. 3. & 4. (no corresponding Federal provisions), requirements for permit amendment or revision;
- IAC 27-40.32(5) (30 CFR 773.11(a)), permit renewal not required when only Phase III bond liability remains on the permit area;
- IAC 27-40.32(6) (no corresponding Federal provision, additions to the Federal requirements at 30 CFR 774.15(b)), contents of permit renewal application; and
- IAC 27-40.32(7) (no corresponding Federal provision), modification of the incorporation of Federal regulations by reference so that they cite the correct regulatory authority.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed revisions to the Iowa rules are no less effective than the Federal regulations in meeting SMCRA's requirements, and approves these proposed revisions.

**2. Substantive Revisions to Iowa's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations**

Iowa proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

IAC 27-40.4(9) (30 CFR 701.5, definition of "previously mined area").

IAC 27-40.32(3)a. (introductory text) (30 CFR 774.13(a)), permittee right to submit application for permit revision/amendment.

IAC 27-40.32(3)a.2. (30 CFR 774.11 (b) & (c)), right of regulatory authority to order permit revision/amendment, and administrative and judicial review of such orders.

Because these proposed Iowa rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations in meeting SMCRA's requirements and approves these proposed revisions.

The Director further notes that the revision to IAC 27-40.4(9) (definition of "previously mined area") satisfies a required program amendment codified at 30 CFR 915.16(a)(1) that was imposed on November 6, 1991 (56 FR 56578, 56594), and is removing this requirement.

**3. IAC 27-40.3(207). General Provisions of Regulatory Program**

Iowa proposes to add a new paragraph providing that "[i]n lieu of the regulations deleted at 30 CFR 700.12 concerning 'Petitions to initiate rulemaking,' rules of the Iowa Department of Agriculture and Land Stewardship at 21 IAC Chapter 3, 'Petitions for Rulemaking' shall serve as the basis for submitting petitions to initiative rulemaking."

Iowa had previously submitted the referenced rules as part of an earlier program amendment, and OSM found them to be no less effective than the Federal regulations at 30 CFR 700.12 that Iowa chose not to incorporate by reference in its program. However, in that earlier amendment Iowa was required to further amend its program to include a clear reference to these State rules within its regulatory program (see 59 FR 5709, 5712; February 8, 1994; Finding No. 8). The Director finds that Iowa's current proposed program amendment clearly informs the public of where to locate the procedures and requirements for petitions for rulemaking under the Iowa regulatory program, and approves the proposal. Additionally, the proposal satisfies a required program amendment codified at 30 CFR 915.16(b)(1) that was imposed on February 8, 1994 (59 FR 5709, 5723); therefore the Director is removing this requirement.

#### 4. IAC 27-40.31(14). Requirements for Permits and Permit Processing

Iowa proposes to delete and reserve this subrule, which adds to Iowa's incorporation by reference of 30 CFR 773.15(a)(2) the words "[i]n case willful suppressing or falsifying of any facts or data is identified, the division may require the applicant to reapply for the same area." OSM notes that 30 CFR 773.15(a)(2) provides that in the review of applications for permits or permit revisions, the applicant has the burden of proof that the application is in compliance with all requirements of the regulatory program.

Iowa previously proposed this added language in a program amendment, but OSM found that under SMCRA Section 510(b)(1) and 30 CFR 773.15(c)(1) (Iowa counterpart provisions at Iowa Code 207.9(2)(a) and (IAC 27-40.31), if such willful suppressing or falsification of any facts or data in a permit application is identified, the regulatory authority would have no discretion and would be required to deny the permit. OSM thus found this Iowa subrule to conflict with SMCRA and the Federal regulations, and did not approve this subrule (see 59 FR 5709, 5714; February 8, 1994; Finding No. 13b). Iowa, in response, is now proposing to delete this unapproved language. OSM notes that the Iowa program, in the general incorporation by reference at IAC 27-40.31(207) of the Federal regulations at 30 CFR Part 773, continues to incorporate 30 CFR 773.15(a)(2) by reference. For the reasons specified in the February 8, 1994, **Federal Register**, the Director finds that the proposed deletion of this added language is not inconsistent with SMCRA or the Federal regulations, and is approving the deletion.

#### 5. IAC 27-40.32(207). Permit Revision/Amendment, Renewal, Transfer

Iowa proposes to delete its incorporation by reference of the Federal regulations at 30 CFR Part 774, as in effect on July 1, 1992 (with some exceptions and additions), and to add a new incorporation by reference of those same Federal regulations, but with a different set of exceptions and additions. Some of these new exceptions and additions are substantively the same as the old exceptions and additions, and have been addressed in Finding No. 1 above; others of the new additions are substantively the same as certain Federal regulatory provisions, and have been addressed in Finding No. 2 above; and the remainder of the exceptions and additions are discussed below.

#### a. IAC 27-40.32(1) Permit Revision/Amendment Orders

Iowa proposes at IAC 27-40.32(1) not to incorporate into its program by reference the Federal requirements at 30 CFR 774.11 (b) and (c). However, as noted in Finding No. 2 above, Iowa is also proposing to add at IAC 27-40.32(3)a.2. requirements that are substantively the same as these Federal requirements. Therefore the Director approves the proposal at IAC 27-40.32(1) to delete 30 CFR 774.11 (b) and (c) from the new incorporation by reference.

#### b. IAC 27-40.32(2) Revisions Versus Amendments

Iowa proposes to use the term "revision"; to describe changes to permits that constitute significant departures from the approved permit, and to use the term "amendment" to describe changes that do not constitute significant departures. Iowa further proposes that significant departures shall be any change in permit area, mining method or reclamation procedure which would, in the opinion of the Iowa regulatory authority, significantly change the effect that mining operations would have on persons impacted by the permitted operation, on cultural resources, or on the environment. Finally, Iowa proposes to delete the incorporation by reference of the Federal regulations at 30 CFR 774.13 (permit revisions), except that the notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b), and 778.21 would apply to all "revisions" (i.e., to all significant departures). A related requirement at proposed IAC 227-40.32(3)c. would require that any application for either revision or amendment must provide replacement documentation fully describing the proposed changes, in the same detail as required in the original permit.

The Federal regulations at 30 CFR 774.13(b)(2) require regulatory authorities to establish guidelines which establish the scale or extent of permit revisions for which all of the permit application information requirements and permit application procedures of the Federal regulations (including the notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) & (3), and 778.21) shall apply, with the proviso that such requirements and procedures must apply at a minimum to all significant revisions.

The Director finds that Iowa, by (1) defining "revision" and "amendment," (2) requiring that the specified

procedural requirements (notice, public participation, etc.) apply to all "revisions," and (3) requiring that revision and amendment applications contain replacement documentations in the same detail as the original permit, has established guidelines as required by 30 CFR 774.13(b)(2). Further, Iowa's proposed definitions assure that these requirements and procedures requirements will apply to all significant permit changes, as required by the proviso in that Federal regulation.

Regarding Iowa's proposal to delete the incorporation by reference of the Federal regulations at 30 CFR 774.13, OSM has reviewed Iowa's proposal and has determined that it incorporates counterpart requirements for each of the provisions of § 774.13 other than the one specifically discussed above (§ 774.13(b)(2)). As discussed in Finding No. 2 above and Finding No. 5c below, counterparts of those Federal provisions are incorporated in Iowa's proposed rules as follows (proposed IAC counterparts in parentheses): § 774.13(a) (IAC 27-40.32(3)a, introductory text); § 774.13(b)(1) (IAC 27-40.32(3)b.); § 774.13(c) (IAC 27-40.32(3)d.); and § 774.13(d) (IAC 27-40.32(3)e.). Based on the discussion in Finding Nos. 2 and 5c regarding these provisions, the Director finds that Iowa's proposal at IAC 27-40.32(2) not to incorporate 30 CFR 774.13 does not render the Iowa program less effective than § 774.13 in meeting SMCRA's requirements.

In summary, the Director finds Iowa's definitions of "revision" and "amendment" to be in accordance with the Federal regulations at 30 CFR 774.13(b)(2), and the deletion of the incorporation by reference of most of 30 CFR 774.13 to be no less effective than the Federal regulations in meeting SMCRA's requirements; the Director is therefore approving proposed IAC 27-40.32(2). Additionally, the proposal satisfies a required program amendment, codified at 30 CFR 915.16(a)(5), that was imposed on November 6, 1991 (56 FR 56578, 56594), and later modified on February 8, 1994 (59 FR 5709, 5723); the Director is therefore removing this requirement.

#### c. IAC 27-40.32(3) Requirements for Revisions and Amendments

1. *Permit changes that require either a permit revision or a permit amendment.* Iowa proposes at IAC 27-40.32(3)a.1. that either a revision or an amendment is required for any change in the approved permit; further, all information related to approved revisions or amendments must be

updated in all public copies of the permit.

The Federal regulations at 30 CFR 774.13 do not directly address this issue. However, in the preamble to the Federal regulations at 30 CFR 774.13(b)(2), dated September 28, 1993 (48 FR 44344, 44377), OSM clarified its interpretation of these regulations that all changes must be approved and incorporated into the permit:

Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to that document. The permit and all public copies of it should reflect all revisions approved by the regulatory authority so that all interested persons, including inspectors, the operator, and the public, will have an accurate copy of the permit. The permit is the document which authorizes the operator to mine and must be accurate.

The Director finds Iowa's proposal to be consistent with this interpretation and is approving the proposal.

2. *Timeframes for decisions on applications.* Iowa proposes at IAC 27-40.32(3)b. that applications for permit revisions will be approved or disapproved within 90 days following a determination of completeness, and that an application for an amendment will be approved or disapproved within 60 days of submittal of the application.

The Federal regulations at 30 CFR 774.13(b)(1) do not specify timeframes for action on revision applications, but rather require regulatory authorities to establish time periods for such approvals or disapprovals. The Director finds that Iowa's proposal establishes such time periods and that the time periods will ensure that operators receive timely decisions. Therefore the Director is approving the proposal.

3. *Administrative and judicial review.* Iowa proposes at IAC 27-40.32(3)c. that: "[a]ny application for an amendment or a revision under these rules shall, at a minimum, be subject to the requirements of Part 9 of these rules \* \* \*." OSM notes that Part 9 of Iowa's rules contains, among other things, the requirements for administrative and judicial review of Iowa permit actions; it thus contains the Iowa program counterparts to 30 CFR Part 775 (administrative and judicial review of permit decisions).

The Federal regulations at 30 CFR 775.11(a) provide that decisions on applications for any permit revision (whether significant or insignificant) are subject to administrative review; under section 775.13(a), any administrative review decision (including administrative review of any permit

revision application decision) is subject to judicial review. The Director finds that Iowa's proposal is consistent with these requirements and is approving the proposal.

4. *Criteria for approval.* Iowa proposes to add at IAC 27-40.32(3)d. three criteria for the approval of applications for permit revisions and amendments. The criteria proposed are: (1) That no such application shall be approved unless the application demonstrates, and the Iowa regulatory authority finds, that the reclamation as required by Iowa's Act and the regulatory program can be accomplished; (2) that the application complies with all requirements of the Act and the regulatory program; and (3) that "any applicable requirements of written findings for the permit have also been met."

The Federal regulations at 30 CFR 774.13(c) require that no application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds: (1) That reclamation as required by SMCRA and the regulatory program can be accomplished; (2) that the application complies with all requirements of SMCRA and the regulatory program; and (3) that "applicable requirements under section 773.15(c) which are pertinent to the revision are met." The cited rule, 30 CFR 773.15(c), specifies written findings for application approval, and, as applied to an application for a significant revision, requires that the application not be approved unless the application affirmatively demonstrates, and the regulatory authority finds in writing, that several specified requirements, where applicable, have been met.

The first two of Iowa's proposed criteria are substantively the same as those specified in the Federal regulations. The third criterion, written findings, is in one way more stringent than the Federal requirement because it is applied to both revision and amendment applications, whereas under the Federal regulations this criterion is applied only to applications for significant revisions. Under SMCRA section 505(b) and 30 CFR 730.11(b), no State regulation which provides for more stringent regulation of surface coal mining and reclamation operations than do the Federal regulations shall be construed to be inconsistent with SMCRA or with the Federal regulations.

OSM does not find, however, that this proposed third criterion ("and any applicable requirements of written findings for the permit have also been met") clearly requires that new findings be written (if applicable) for approval of

the amendment or revision. Instead, Iowa's proposed language could be interpreted to be limited to requiring consistency of the revision/amendment application with the written findings of the original permit approval; such an interpretation would be less effective than the third criterion of the Federal regulation. However, OSM notes that Iowa added this criterion in its revised amendment of November 8, 1994 (Administrative Record No. IA-408), which responded to OSM's letter of October 3, 1994 (Administrative Record No. IA-407); in that letter, OSM had indicated to Iowa that its initial submittal was deficient in not containing a counterpart to OSM's criterion for written findings. In its revised amendment of November 8, 1994, Iowa indicates that this proposed language was intended to address that deficiency. OSM therefore concludes that Iowa intends its language to be interpreted in accordance with the requirements of the Federal regulation criterion; i.e., that Iowa intends that new written findings are required, if applicable, prior to approving an application for permit amendment or revision. Based on this understanding, the Director finds Iowa's proposal at IAC 27-40.32(3)d. to be no less effective than 30 CFR 774.13(c) in meeting SMCRA's requirements, and the Director is approving the proposal.

5. *Additions of area.* Iowa proposes at IAC 27-40.32(3)e. that any increase in permit area, except incidental boundary revisions (hereinafter, "IBR's"), shall not be approved under "this subrule" (i.e., neither as a permit revision nor as an amendment), but rather "shall be treated as" a new permit application. Iowa additionally proposes that IBR's are considered as significant departures and hence shall be treated as revisions; that a total of 20 acres of IBR's would be allowed over the life of the permit, with individual increments subject to approval by Iowa (presumably under other criteria for determining "incidental"); and lastly, that applications for IBR's shall include a demonstration that the proposed additional permit area is contiguous to the approved permit.

OSM interprets Iowa's proposed language that increases in permit area (other than IBR's) "shall be treated as a new permit application" to mean that any application for increased area (unless it meets the criteria for an IBR) will be subjected to all the entire procedural and substantive requirements for a new permit application under IAC 27-40.31(207, 27-40.33(207), 27-40.34(207), 40-27.35 or .37(207), 27-40.36 or .38(207), and

27-40.39(207). Under IAC 27-40.4(207) and 27-40.31(207), this would include the requirement that increases in permit area (other than IBR's) be made by means of an "administratively complete application."

The Federal regulations at 30 CFR 774.13(d) provide that any extension to the permit area, except IBR's, shall be made by application for a new permit. The Federal regulations provide no guidance as to what constitutes an "incidental" boundary revision.

Iowa's proposal, under OSM's interpretation stated above, would require additions other than IBR's to be made by application for a new permit. It places an upper limit on the amount of area that may be added by IBR's and requires that IBR's be contiguous to the permit; these proposed requirements add specificity to aid Iowa in determining what constitutes an "incidental" boundary revision. For these reasons the Director finds proposed IAC 27-40.32(3)e. to be consistent with the Federal regulations at 30 CFR 774.13(d) in meeting SMCRA's requirements, and is approving the proposal.

#### 6. IAC 27-40.51(7). *Time Requirements for Processing of Bond Release Applications*

At IAC 27-40.51(7), Iowa previously proposed to modify 30 CFR 800.40(a)(2) (as incorporated by reference) by requiring the regulatory authority to determine that an application for bond release is complete before the bond release application is advertised. OSM did not approve that proposal because it would create conflicts with other required time frames in the processing of bond release applications (see 59 FR 5709, 5718; February 8, 1994; Finding No. 22).

Iowa now proposes to delete that unapproved modification of 30 CFR 800.40(a)(2); thus, under IAC 27-40.51(207), 30 CFR 800.40(a)(2) would be incorporated without modification. Iowa further proposes to add a new rule at IAC 27-40.51(7) which would provide that an application for bond release will not be considered filed until a written determination of completeness for the bond release application has been provided to the applicant by Iowa, and would further provide that Iowa will make a determination of completeness within 30 days of receipt.

Under the Federal regulations at 30 CFR 800.40, the starting point for all time requirements related to processing bond release applications is the date a bond release application is "filed;" but no clarification is provided regarding whether an application must be found

to be complete before being considered "filed."

In the absence of any contrary indication in the Federal regulations, the concept of requiring a determination of completeness before considering a bond release application "filed" would not be considered inconsistent with those Federal regulations, providing other aspects of the bond release process are not adversely affected. One such aspect to be considered is the procedural protection afforded operators by assuring them of timely decisions on bond release applications. Iowa's proposal, by providing a maximum of 30 days for Iowa to make a determination of completeness, provides assurance that decisions on bond release applications will not be unduly delayed.

Further, OSM believes that this proposal will assist Iowa in the efficient administration of its program, and may also serve the interests of operators in obtaining bond releases: if incomplete applications are entered into the strict time frames of these procedures, there may not be sufficient time to resolve all problems before a decision must be rendered, resulting in the automatic denial of the application. This would require the operator to file a new application, which would delay the potential bond release and create an additional unnecessary workload for both the regulatory authority and the operator.

Based on the above discussion, the Director finds that Iowa's proposal at IAC 27-40.51(7) is not inconsistent with the Federal regulations at 30 CFR 800.40, and is approving the proposal.

#### 7. IAC 27-40.63(2). *Backfilling & Grading: Time and Distance Requirements*

Iowa proposes to incorporate by reference 30 CFR 816.100 and delete the incorporation by reference of 816.101 (both as in effect on July 1, 1992), and add that the following shall apply: rough backfilling and grading for surface mining activities shall be completed within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked (spoil from the active pit constituting the first ridge); except that Iowa may extend the time allowed for the entire permit area or for a specified portion of it if the permittee demonstrates (in accordance with IAC 27-40.36 [30 CFR 780.18(b)(3)]) that additional time is necessary. Iowa adds in a narrative note to the submittal that it intends to adopt time and distance standards only for area mining.

OSM's time and distance requirements at 30 CFR 816.101 were suspended on July 31, 1992 (57 FR 33874). Therefore OSM must evaluate State time and distance requirements against the general contemporaneous reclamation requirements of 30 CFR 816.100. This regulation requires that all reclamation efforts (including backfilling, grading, topsoil replacement, and revegetation) on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations (except when variances are granted for concurrent surface and underground mining activities).

As noted above, Iowa's proposal incorporates the general contemporaneous reclamation requirement of 30 CFR 816.100 by reference. The additional proposed time and distance requirements provide additional specificity to one aspect of the general requirement and is not inconsistent with the general requirement. Regarding Iowa's intention to specify time and distance standards only for area mining, OSM is aware that all recent coal mining in Iowa has been area mining, and because of the geology and geography of Iowa's coal fields it is likely that only area mining will occur in the near future. Should any other type of surface mining occur, it would still be subject to the general requirement of 30 CFR 816.100, which is consistent with the current Federal regulations (given that § 816.101 is suspended).

Based on the above discussion, the Director finds Iowa's proposal at IAC 27-40.63(2) to be consistent with the Federal regulations at 30 CFR 816.100, and is approving the proposal. The Director further notes that the incorporation by reference of 30 CFR 816.100 requires that topsoil replacement occur as contemporaneously as practicable with mining operations, and thus satisfies the required amendment codified at 30 CFR 915.16(b)(2) that was imposed on February 8, 1994 (59 FR 5709, 5723). Therefore the Director is removing this requirement.

#### 8. IAC 27-40.74(3). *Alternate Enforcement*

Iowa proposes to revise existing incorrect cross-references to the Iowa Code that in this rule replace the cross-references to SMCRA in Iowa's incorporation by reference of 30 CFR 845.15(b)(2). Specifically, Iowa proposes to replace (in its incorporation of 30 CFR 845.15(b)(2) by reference) SMCRA Section 518(e) with Iowa Code Section

207.15(6), SMCRA Section 518(f) with Iowa Code Section 207.15(7), SMCRA Section 521(a)(4) with Iowa Code Section 207.14(3), and SMCRA Section 521(c) with Iowa Code Section 207.14(8).

The Director finds that Iowa has cited the correct Iowa Code counterparts to the cited SMCRA Sections, and that the proposal is thus no less effective than 30 CFR 845.15(b)(2) in meeting SMCRA's requirements, and is approving the proposal. The Director further notes that this approval fulfills the required amendment codified at 30 CFR 915.16(b)(3) that was imposed on February 8, 1994 (59 FR 5709, 5723). Therefore the Director is removing this requirement.

#### 9. IAC 27-40.75(2). Definition of "Violation, Failure, or Refusal"

Iowa proposes to replace the definition of "violation, failure, or refusal" in the Federal regulations at 30 CFR 846.5 with a new definition that is substantively the same as the Federal definition, with one exception. The second part of the Federal definition includes failure or refusal to comply with certain orders, but excludes orders issued under SMCRA Sections 518(b) or 703. Iowa's corresponding statutory provisions (Iowa Code sections 207.15 and 207.28, respectively) do not specifically refer to the issuance of "orders." Therefore in this proposed definition, Iowa has replaced citations to its statute with citations to its implementing rules (IAC 27-40.74(7) and 27-40.7(207)), since these implementing rules do specifically refer to orders issued by Iowa. This replacement of statutory citations with regulatory citations renders Iowa's proposed definition substantively the same as the Federal definition. Therefore the Director is approving the proposal.

#### IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

##### 1. Public Comments

In response to OSM's invitation of public comments, the State Historical Society of Iowa responded on June 17, 1994, with a suggestion that Iowa's proposed definition of "significant departure" (at proposed IAC 27-40.32(2)) be revised to include any change in the permit area, mining method, or reclamation procedure which would, in the opinion of the

regulatory authority, significantly change the effect that mining operations would have on cultural resources (Administrative Record No. IA-404). OSM forwarded the suggestion to Iowa in the issue letter dated October 3, 1994 (Administrative Record No. IA-407).

Iowa included this suggestion in its revised amendment dated November 8, 1994 (Administrative Record No. IA-408). The Director is approving this proposed definition, as discussed in Finding No. 5.b above.

##### 2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Iowa program. No comments were received.

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

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IA-400). EPA did not respond to OSM's request.

##### 4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IA-400). Neither SHPO nor ACHP responded to OSM's request.

##### V. Director's Decision

Based on the above findings, the Director approves Iowa's proposed amendment as submitted on April 13, 1994, and as revised on November 8, 1994.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 915.16 that, within 60 days of the publication of this final rule, Iowa must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR

Chapter VII and a timetable for enactment that is consistent with Iowa's established administrative or legislative procedures.

The Director approves the rules as proposed by Iowa with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 915, codifying decisions concerning the Iowa program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### 1. Executive Order 12866

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

##### 2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) 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 since each such 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.

##### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

**4. 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.*).

**5. Regulatory Flexibility Act**

The Department of the Interior has determined 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 that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 31, 1995.

**Russell F. Price,**

*Acting Assistant Director, Western Support Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 915—IOWA**

11. 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 by revising the heading and by adding paragraph (k) to read as follows:

**§ 915.15 Approval of amendments to the Iowa regulatory program.**

\* \* \* \* \*

(k) Revisions to and/or addition of the following rules, as submitted to OSM on

April 13, 1994, and as revised on November 8, 1994, are approved effective April 6, 1995:

IAC 27–40.3(207), general provisions of regulatory program; 27–40.4(9), definition of “previously mined area;” 27–40.31(14), requirements for permits and permit processing; 27–40.32(207), revisions, amendment, renewal, transfer, sale, assignment of permit; 27–40.51(7), bond release applications; 27–40.63(20), backfilling and grading, time and distance requirements; 27–40.74(3), alternate enforcement; and 27–40.75(2), definition of “violation, failure, or refusal.”

3. Section 915.16 is revised to read as follows:

**§ 915.16 Required program amendments.**

Pursuant to 30 CFR 732.17(f)(1), Iowa is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Iowa’s established administrative or legislative procedures.

[FR Doc. 95–8465 Filed 4–5–95; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 655**

[Docket No. 950118018–5083–02; I.D. 111494E]

RIN 0648–XX02

**Atlantic Mackerel, Squid, and Butterfish Fisheries; Final 1995 Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final specifications for the 1995 Atlantic mackerel, squid, and butterfish fisheries.

**SUMMARY:** NMFS issues the final specifications for the 1995 fishing year for Atlantic mackerel, squid, and butterfish. This action complies with the regulations governing this fishery, which require NMFS to publish annual specifications.

**EFFECTIVE DATE:** April 5, 1995.

**ADDRESSES:** Copies of the Environmental Assessment are available from the Northeast Regional Office, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. Copies of the Mid-Atlantic Fishery Management Council’s quota paper and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, 508–281–9101.

**SUPPLEMENTARY INFORMATION:**

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council appear at 50 CFR part 655. These regulations require NMFS to publish a document specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found in § 655.22.

These specifications are unchanged from the proposed specifications that were published in the **Federal Register** on January 26, 1995 (60 FR 5162). No public comments were received concerning the proposed specifications. After consideration of all relevant data, NMFS has made a final determination of the initial amounts for each species. The following table contains the final 1995 initial specifications for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish.