

"Injun-Weir" sands portion of the recommendation.

Evidence submitted by Virginia supports the assertion that the "Maxon" sands and "Injun-Weir" sands portion of its recommendation underlying Dickenson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia, meet the guidelines contained in § 271.703(c)(2). The Commission adopts Virginia's recommendation.

This amendment shall become effective December 3, 1984.

**List of Subjects in 29 CFR Part 271**

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission,  
Kenneth F. Plumb,  
Secretary.

**PART 271—[AMENDED]**

1. The authority citation for Part 271 reads as follows:

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

2. Section 271.703 is amended by adding paragraph (d)(181) to read as follows:

**§ 271.703 Tight formation.**

(d) *Designated tight formations.*  
(181) "Maxon" sands of the Mauch Chunk Group and the "Injun-Weir" sands of the Pocono Group in Virginia. RM79-76-217 (Virginia -3)

(i) *Delineation of formation.* The "Maxon" sands and the "Injun-Weir" sands underlie all of Dickenson and Buchanan Counties and portions of Lee, Scott, Wise, Russell, and Tazewell Counties, Virginia.

(ii) *Depth.* The average depth to the top of the "Maxon" sands ranges from 2,610 feet in the eastern portion to 2,930 feet in the western portion of the designated area. The average depth to the top of the "Injun-Weir" sands ranges from 3,855 feet in the eastern portion to 4,040 feet in the western portion of the designated area.

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**DEPARTMENT OF THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

**27 CFR Part 9**

[T.D. AFT-187; Ref: Notice No. 418]

**Alexander Valley Viticultural Area**

**Correction**

In FR Doc. 84-27837, beginning on page 42719, in the issue of Wednesday, October 24, 1984, make the following correction:

**§ 9.53 [Corrected]**

On page 42724, in the second column, in § 9.53(c)(5), line one, "12,200" should read "13,200".

BILLING CODE 1505-01-M

**DEPARTMENT OF LABOR**

Occupational Safety and Health Administration

**29 CFR Part 1952**

**Approval of Supplements to the New Mexico State Plan**

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; approval of developmental steps.

**SUMMARY:** This notice approves various supplements to the approved New Mexico Occupational Health and Safety State plan. These supplements, which represent completion of several of the State's developmental steps, concern: legislative amendments to the New Mexico Occupational Health and Safety Act; a revised plan narrative document; regulations for inspections, citations, and proposed penalties; regulations for recording and reporting occupational injuries and illnesses; regulations for variances; regulations for on-site consultation; rules of procedures for the New Mexico Occupational Health and Safety Review Commission; procedures for enforcing employee nondiscrimination provisions; Field Operations and Industrial Hygiene manuals; and a revised occupational safety and health poster.

**EFFECTIVE DATE:** October 30, 1984.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, Washington, D.C. (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

**Background**

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. The New Mexico State plan was approved by the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) as a developmental plan on December 4, 1975. On December 10, 1975, a notice was published in the Federal Register (40 FR 57455) containing the approval decision, description of the plan, and schedule of the State's major developmental commitments. By letters dated August 18, 1976; October 1, 1976; December 20, 1976; December 20, 1977; February 19, 1979; March 7, 1979; February 28, 1980; May 16, 1980; December 5, 1980; April 14, 1981; May 10, 1981; June 1, 1981; April 6, 1982; March 29, 1983; May 11, 1983; June 3, 1983; June 8, 1983; June 15, 1983; June 21, 1983; June 27, 1983; July 18, 1983; October 17, 1983; October 21, 1983; October 26, 1983; January 11, 1984; April 4, 1984, and July 24, 1984 to OSHA's Regional Administrator for Region VI, the State of New Mexico submitted State-initiated and developmental plan change supplements addressing the completion of several of the developmental steps set forth in the initial approval decision. Following Regional review, the supplements were forwarded to the Assistant Secretary for determination as to whether they should be approved. The supplements are described below.

**Description of the Supplements**

1. *New Mexico Legislative Amendments [New Mexico Occupational Health and Safety Act of 1978 (section 50-9-1 et seq. NMSA 1978 as amended in 1983 and 1984)].* One of the developmental commitments given by New Mexico prior to plan approval was that a legislative amendment would be enacted to remove the dual 15 day contest period. In accordance with the developmental step set forth in 29 CFR 1952.363(e), on December 20, 1977, the State submitted a plan change consisting of alternative actions which eliminated the need for legislative corrective action. Subsequently, by letter dated June 8, 1983, the State submitted an amendment to its field operations manual which updated and clarified the alternative actions. (See

further discussion under "Regulations for Inspections, Citations, and Proposed Penalties.")

In 1978 an amendment was enacted to section 50-9-24 adding a new subsection (c), governing the imposition of penalties for serious violations by governmental entities. The amendment requires that penalties be proposed for such serious violations, but provides that such penalty "shall be deemed paid without further action of the State, political subdivision or agency," if the violation is abated within the abatement period. This amendment was submitted by the State on February 28, 1980. In August 1982, the New Mexico Supreme Court ruled that the New Mexico Occupational Health and Safety Act did not allow for private interviewing of employees by the Environmental Improvement Division (EID) at the worksite. As a result of this ruling, in 1983, an amendment to section 50-9-10A(2) was enacted which specifically authorizes the private questioning of employees and employers by EID officials at the worksite. Also, in 1983, an amendment to section 50-9-22C was enacted which specified that the New Mexico Occupational Health and Safety Bureau of the Environmental Improvement Division rather than the State Mine Inspector would have jurisdiction in those places of employment subject to the jurisdiction of the U.S. Department of Labor under the Federal Occupational Safety and Health Act of 1970. This amendment resolved a longstanding issue between the Environmental Improvement Division and the State Mine Inspector regarding the jurisdiction over working conditions in copper smelters. These enacted amendments were submitted by the State on July 18, 1983. On April 4, 1984, as the result of Federal OSHA's objection to an additional 1983 legislative amendment which prohibited the use of interview statements as evidence in any civil or enforcement actions, the State submitted an enacted amendment to section 50-9-21B which removed that restriction.

Also, on April 4, 1984, the State submitted an enacted amendment to section 50-9-12. Subsection 50-9-12E requires that emergency temporary standards promulgated by the State in response to those issued under the Occupational Safety and Health Act of 1970 shall be enforceable to the same extent. Subsection 50-9-12F requires that where a Federal emergency temporary standard (ETS) is made permanent the State ETS shall remain in effect an additional 120 days after

promulgation of the superseding Federal permanent standard.

**2. Management Information System.** In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(a), the State was to develop and implement a management information system by January 1, 1976. By letter dated August 18, 1976, the State submitted a plan supplement indicating that its management information system was fully operational. Also, by letter dated June 3, 1983, New Mexico amended its plan to indicate its participation in OSHA's unified Federal/State management information system.

**3. Review Commission Rules of Procedures.** In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(c), the State was to promulgate review commission rules of procedures by January 31, 1976. On October 1, 1976, New Mexico submitted its occupational health and safety review commission rules of procedures for administrative review. On February 25, 1977, a notice was published in the Federal Register (42 FR 11025) inviting public comment on the plan supplement. No public comments were received. In response to Federal review, the State on February 15, 1978; May 16, 1978; March 7, 1979; February 7, 1980; December 8, 1980; January 20, 1981; May 27, 1981; January 14 and 28, 1982; April 30, 1982; June 22, 1983; August 8, 1983; and November 9, 1983, submitted various revisions, amendments, and clarifications to its revised review commission procedures. On December 16, 1983, the State repromulgated its review commission rules of procedures. By letter dated January 11, 1984, the State submitted its revised review commission rules of procedures which became effective on January 1, 1984, and parallel 29 CFR Part 2200.

**4. Enforcement Program.** In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(d), New Mexico's enforcement program was to achieve operational status by December 1, 1976. By letter dated December 20, 1977, the State submitted a plan supplement attesting to its enforcement program being operational as of June, 1976.

**5. Public Employee Program.** In accordance with the requirement of the developmental step set forth in 29 CFR 1952.363(f), the State's public employee program was to become operational by July 1, 1977. By letter dated December 20, 1977, the State submitted a plan supplement involving its public employee program being operational

since June, 1976. On February 28, 1980, the State submitted an amendment to its plan narrative regarding the imposition of penalties for serious violations by governmental entities. (See discussion under "Legislative Amendments").

**6. Regulations for Recording and Reporting Occupational Injuries and Illnesses (Regulation 101-1904).** On August 8, 1975, prior to plan approval, the State adopted regulations for recording and reporting occupational injuries and illnesses. On October 10, 1978, the State repromulgated new regulations (covering both private and public sectors) that paralleled the Federal 29 CFR Part 1904. Upon review by OSHA, it was determined that the regulations included unacceptable provisions for the annual summary, worker access to records, and duties of employers. On February 19, 1979, the State repromulgated its regulations which corrected the deficiencies and included other modifications to reflect Federal changes. In addition, on June 1, 1981 and on October 26, 1983, the State submitted amendments to its regulations to reflect Federal changes.

**7. Regulations for Inspections, Citations, and Proposed Penalties [NM Regulations 102; 105; 106 (.1 through .18); 107 and 108].** On August 8, 1975, prior to plan approval, the State adopted regulations for inspections, citations and proposed penalties. On March 7, 1979; December 21, 1979; January 2, 1980; April 14, 1981, the State submitted repromulgated regulations. The April 14th submission became effective on April 10, 1981. On June 1, 1981, the State submitted amendments which became effective on May 10, 1981. Upon review by OSHA, a number of problems were identified. Those problems dealt with: the State's authority to seek ex parte and preinspection warrants; the State's ability to privately question employees; omission of provisions addressing employer and employee representatives accompaniment during inspection; "trade secret" definition; employee complaint confidentiality; and interim steps taken to safeguard employees during petition for modification of abatement (PMA's) periods. In addition, OSHA expressed concern because of a lack of timeframes in the State's informal administrative review process which is part of the State's unique two-tier contest procedure.

By letters dated December 5, 1980, and April 6, 1982, the State submitted responses asserting its ability to obtain both preinspection and ex parte warrants. On October 21, 1983, the State submitted an amended regulation 106.1 which was implemented to protect the

rights of employers and employees during private questioning. Further, on April 4, 1984, in response to OSHA's concern, the State submitted an assurance that a compliance officer's failure to comply with the four elements, i.e., right to private interview, right to counsel, written statement, and signed statement, delineated in regulation 106.1 will not jeopardize the confidentiality of the interview statements. Also, the State submitted amendments to its regulation 106 providing for consultations with employees during inspection; confidentiality for employees referred to in a complaint; and requiring the employer to list interim steps to safeguard employees against cited hazards during PMA's. These amendments became effective on April 26, 1981. An amendment dated May 10, 1981, defines "trade secret."

By letters dated May 27, 1981, and June 8, 1983, the State addressed the timeframe for conducting informal administrative reviews and clarifying the two-tier contest procedure as follows: An employer has 15 working days from receipt of the citation or notice of proposed penalty to file a notice of contest. Upon receipt of a notice of contest, the Environmental Improvement Division shall promptly (within 30 days) schedule an informal administrative review. Within 10 days of the informal administrative review, the reviewing officer shall notify the contesting party of the decision by issuing a summary and/or settlement agreement. (In rare cases where the State cannot complete the review within 10 days, an outside limit of 30 days has been established for issuance of the summary and/or settlement agreement.) If the contested matters are not successfully resolved at the informal administrative review, the contesting party has 15 working days from receipt of the summary to request a formal hearing before the Review Commission. All notices of contest are immediately docketed with the Review Commission. Where settlement is not reached at the informal review stage, the division must file a summary of administrative review with the Review Commission no later than 90 days after docketing. Finally, by letters dated May 11, 1983 and June 14, 1983, the State submitted amendments to its regulations for failure to correct a violation for which a citation has been issued and petition for modification of abatement periods.

**8. Petitions for Variances from Job Safety and Health Regulations (NM Regulation 103).** On August 8, 1975, prior to plan approval, the State adopted regulations for rules of practice for

variances, limitations, variations, tolerances and exemptions. On March 7, 1979, December 21, 1979, January 2, 1980, and April 14, 1981, the State submitted repromulgated regulations. The April 14th submission became effective on April 10, 1981. Upon review by OSHA, a number of problems were identified. By letters dated June 18, 1981, and May 11, 1983, the State submitted Field Operations Manual amendments and assurances which included provisions for employer posting of application; publication of application; public comment period; hearing (upon request); investigation and decision; and mandatory hearing for modification/revocation of a variance.

**9. Regulations for On-Site Consultation (NM Regulation 104).** On March 7, 1979, and June 1, 1981, the State submitted promulgated regulations providing for on-site consultation to employers upon request. Under its plan, New Mexico provides on-site consultation services to both private and public sector employers. After review by OSHA, the State on October 17, 1983, amended the rules to ensure that enforcement personnel are not used to perform consultation visits; provide that where an employer does not immediately abate an imminent danger situation it will be referred to enforcement; and allow for opening and closing conferences. Further review by OSHA revealed that although the State's field operations manual satisfactorily addressed the correction and referral of serious hazards, the State's regulation 104 lacked such a provision. By letters dated April 4, 1984, and July 10, 1984, the State submitted assurances that regulation 104 will be amended to include referral of uncorrected serious violations.

**10. Discrimination Provisions.** On March 29, 1983, the State submitted revised provisions dealing with employee discrimination. The discrimination procedures include provisions for (1) filing of a written complaint within 30 days; (2) notification to the complainant and employer, within 60 days of complaint receipt, of the director's determination; and (3) ability of the director to initiate compensatory actions, including backpay and reinstatement of the employee. On June 15, 1983, the State submitted an amendment to its discrimination procedures. The amendment provides that the State will accept oral discrimination complaints on the 30th day with written confirmation later. The State's discrimination provisions are equivalent to 29 CFR Part 1977.

**11. Compliance Manuals.** By letter dated May 16, 1980, the State of New Mexico submitted a supplement to its plan containing the State's field operations manual. As a result of Federal OSHA's review and subsequent Federal policy changes the State submitted amendments to its 1980 FOM concerning: discrimination (dated March 4, 1983; May 23, 1983; June 27, 1983; and August 10, 1983); petition for modification of abatement date (dated June 17, 1983); complaints (dated June 17, 1983; referrals (dated June 17, 1983); pre-inspection warrants (dated June 16, 1983); informal administrative review (dated June 8, 1983); general duty clause violations (dated June 17, 1983); multiemployer citation policy (dated June 20, 1983); and variances (dated May 1, 1983). The State's 1980 field operations manual together with the subsequent amendments reflect the Federal field operations manual guidelines in effect in 1980 and subsequent changes through March 1983. By letter dated July 25, 1980, the State formally notified OSHA that it has adopted the revised 1979 Federal Industrial Hygiene Field Operations Manual (IHOM) for use by its industrial hygiene staff. In addition, on July 24, 1984, the State submitted a cover chapter to its IHOM which documents adoption and provides for conversion of Federal reference language to State reference language.

**12. Plan Narrative: New Mexico** on February 28, 1980, submitted a supplement containing a revised plan narrative. The State plan narrative updated the State's plan to reflect the 1978 State government reorganization, division reorganization, imposition of penalties for serious violations by governmental entities; and the recompilation of the New Mexico statutes. The personnel operations of the New Mexico Environmental Improvement Division and the servicing merit system were reviewed by the Civil Service Commission and were found to be acceptable. The State also has an Affirmative Action Plan. Subsequently, the State submitted amendments concerning its organizational charts (dated June 16, 1983 and June 27, 1983); removal of Radiation Health Protection Act from its State Program, inserting new position descriptions which delete references to the radiation health activity, Radiation Protection Bureau and Bureau chief (dated June 21, 1983); and its coverage of working conditions in copper smelters (dated April 4, 1984). The State's plan narrative addresses its budget and current staffing allocation of 7 safety and 3 health compliance

officers. Further, by letter dated July 24, 1984, the State submitted an amendment to its plan narrative which describes its internal (staff) and external (employer/employee) training programs.

13. *State Poster.* The New Mexico State poster was approved on July 13, 1976 [41 FR 28708]. New Mexico on May 10, 1983, submitted a revised poster which reflects the imposition of penalties for serious violations in governmental entities. On April 4, 1984, as a result of Federal OSHA's review, the State submitted an assurance that its poster will be amended, at the next printing, to include a provision to address the correction and referral of serious hazards during on-site consultation.

#### Location of the Plan and Its Supplements for Inspection and Copying

A copy of the State's plan and the supplements are available for inspection and copying during normal business hours at the following locations:

Office of the Director of Federal Compliance and State Programs.  
Occupational Safety and Health Administration, Room N3700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Office of the Regional Administrator, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, Room 602, 555 Griffin Square Building, Dallas, Texas 75202

Environmental Improvement Division, Crown Building, 725 St. Michael's Drive, Santa Fe, New Mexico 87503

#### Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary for Occupational Safety and Health may prescribe alternative procedures to expedite the review process or for any good cause which may be consistent with applicable law. The Assistant Secretary finds that the New Mexico plan supplements were adopted in accordance with procedural requirements of State law and are consistent with commitments made in the approved plan. Accordingly, it is found that further public participation would be unnecessary.

#### List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

#### Decision

##### PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

After careful consideration, the New Mexico plan supplements outlined above are approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, 29 CFR 1952.364 is amended to reflect the completion of developmental steps by adding a revised paragraph (a) and new paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) to the list of completed developmental steps. As revised, § 1952.364 reads as follows:

#### § 1952.364 Completed developmental steps.

(a) In accordance with the requirements of § 1952.10, the New Mexico State poster was approved by the Assistant Secretary on July 2, 1976. A revised State poster reflecting legislative amendments and procedural changes was submitted on May 10, 1983, and approved by the Assistant Secretary on October 30, 1984.

(b) In accordance with the intent of 29 CFR 1952.363(e), on December 20, 1977, and June 3, 1983, New Mexico submitted procedural guidelines for its two-tier contested case procedures in lieu of legislative amendments. The procedures establish maximum timeframes for completion of the first level, informal administrative review of contested cases, and immediate docketing of cases with the New Mexico Occupational Health and Safety Review Commission. A second 15 day contest period is provided for employer/employee appeal directly to the Review Commission. The New Mexico Occupational Health and Safety Act (section 50-9-1 et seq., NMSA 1978) was amended in 1978, 1983 and 1984. These amendments deal with the imposition of penalties for serious violations by governmental entities; the private questioning of employees and employers by the Environmental Improvement Division officials at the worksite; the jurisdiction of the Environmental Improvement Division over working conditions in copper smelters; the use of interview statements as evidence in a civil or enforcement action; and the State's adoption of emergency temporary standards. These clarifications and legislative amendments were approved by the Assistant Secretary on October 30, 1984.

(c) In accordance with 29 CFR 1952.363(a), New Mexico submitted documentation on establishment of its

Management Information System on August 18, 1976, and June 3, 1983. The June 3, 1983, amendment specifies New Mexico's participation in OSHA's Unified Management Information System. These supplements were approved by the Assistant Secretary October 30, 1984.

(d) In accordance with 29 CFR 1952.363(c), New Mexico promulgated Review Commission Rules of Procedures on October 1, 1976. On January 11, 1984, New Mexico submitted revised Review Commission Rules of Procedures which parallel 29 CFR Part 2200. The revised rules were approved by the Assistant Secretary on October 30, 1984.

(e) In accordance with 29 CFR 1952.363(d), New Mexico submitted documentation on December 20, 1977, showing that its enforcement program was operational effective June, 1976. The supplement was approved by the Assistant Secretary on October 30, 1984.

(f) In accordance with 29 CFR 1952.363(f), New Mexico by letter dated December 20, 1977, submitted a plan supplement regarding its development of an occupational health and safety program for public employees in June, 1976. A revision thereto was submitted on February 28, 1980. These supplements were approved by the Assistant Secretary on October 30, 1984.

(g) New Mexico regulations for recording and reporting occupational injuries and illnesses parallel to 29 CFR Part 1904 which were originally promulgated on August 8, 1975, were revised on February 19, 1979, June 1, 1981, and October 26, 1983. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(h) New Mexico regulations for inspections, citations and proposed penalties parallel to 29 CFR Part 1903 originally promulgated on August 8, 1975, were revised on April 14, 1981; May 10, 1981; May 27, 1981; June 1, 1981; April 6, 1982; May 11, 1983; June 8, 1983; June 14, 1983; and April 4, 1984. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(i) New Mexico rules of practice for variances, limitations, variations, tolerances and exemptions parallel to 29 CFR Part 1905 which were originally promulgated on August 8, 1975, were revised on April 14, 1981. Subsequently, on June 18, 1981, and May 11, 1983, the State submitted amendments and assurances to its Field Operations Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(j) New Mexico promulgated regulations for on-site consultation on

March 7, 1979 and June 1, 1981 with an amendment dated October 17, 1983 and assurances dated April 4, 1984 and July 10, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(k) New Mexico adopted discrimination provisions parallel to 29 CFR Part 1977 on March 29, 1982, with an amendment dated June 15, 1983. These supplements were approved by the Assistant Secretary on October 30, 1984.

(l) New Mexico submitted its field operations manual on May 16, 1980, with subsequent amendments dated March 4, 1983; May 11, 1983; May 23, 1983; June 8, 1983; June 16, 1983; June 17, 1983; and June 27, 1983. The manual reflects changes in the Federal program through March 1983. On July 25, 1980, with a subsequent amendment dated July 24, 1984, the State adopted Federal OSHA's Industrial Hygiene Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(m) New Mexico on February 28, 1980, submitted a supplement containing a revised plan narrative with further revisions dated June 16, 1983; June 21, 1983; June 27, 1983; April 4, 1984, and July 24, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(Sec. 18, Pub. L. 91-595, 84 Stat. 1608 (29 U.S.C. 687))

Signed in Washington, D.C. this 30th day of October, 1984.

Robert A. Rowland,  
Assistant Secretary.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 915

#### Extension of Deadline for Satisfaction of a Condition of Approval of the Iowa Regulatory Program

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

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing the Secretary of the Interior's decision to extend the deadline for Iowa to meet a condition of approval of its State permanent regulatory program under the Surface Mining and Reclamation Act of 1977 (SMCRA). The condition concerns the prepayment of civil penalties.  
**EFFECTIVE DATE:** November 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

#### SUPPLEMENTARY INFORMATION:

##### Background on the Iowa Program

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (45 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 Federal Register.

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Iowa agreed to satisfy original conditions (a) and (c) by July 1, 1981 and condition (b) by January 1, 1982. Original conditions (a), (b) and (c) have been removed (47 FR 22950, May 26, 1982, and 47 FR 39482, September 7, 1982). On November 9, 1983, OSM announced the Secretary's decision to impose a new condition of approval on the Iowa program (43 FR 51457).

##### Background on the Condition

When Iowa's program was conditionally approved by the Secretary of the Interior on January 21, 1981, it did not include a prepayment requirement comparable to that contained in section 518(c) of SMCRA and 30 CFR 845.19. At the time of issuance of the conditional approval of Iowa's permanent program, the Secretary was enjoined on constitutional grounds by the U.S. District Court for the Southern District of Iowa from requiring the State to include in its program a provision comparable to the prepayment requirement in section 518(c) of SMCRA. *Star Coal Co. v. Andrus*, 14 ERC 1325 (1980). The issue of the constitutionality

of section 518(c) was also pending before the U.S. Supreme Court in two cases. Because of the court cases pending at the time of his decision, the Secretary did not condition his approval of Iowa's program upon correction of the absence of an escrow requirement in the civil penalty provisions.

However, the decision notice on Iowa's program (Finding 4F(c)), stipulated that should the Supreme Court rule that the prepayment requirement of section 518(c) was constitutional, the Secretary would then take steps to require Iowa to comply with the requirements relating to prepayment of civil penalties.

In both of the cases before the Supreme Court, the issue of the constitutionality of section 518(c) was pretermitted on the ground that the issue was not ripe for the court to decide. See *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 16 ERC 1027 (1981); *Hodel v. Indiana*, 452 U.S. 314, 16 ERC 1048 (1981). Although the Supreme Court did not rule on the constitutionality of section 518(c), the decisions in the *Hodel* and *Star Coal* cases removed the legal restraints on the Secretary's statutory obligation to require Iowa to comply with the prepayment provisions of SMCRA and existing regulations.

Therefore, on January 14, 1982, OSM notified the Iowa Department of Soil and Conservation (DSC) that an amendment to Iowa's program was needed because the cases in which the constitutionality of SMCRA's prepayment provision was challenged had been decided and the injunction against the Secretary in the case of *Star Coal* had been lifted.

In the January 14, 1982 letter, OSM noted that it was considering modifying the Federal penalty prepayment requirement because of its concern that rigid adherence to the rule, in certain circumstances, might violate the constitutional guarantee of due process. However, on May 25, 1982, OSM notified the State that no modification to the Federal prepayment rule was anticipated in the near future and set a deadline of June 30, 1983, for the State to amend its program. On August 16, 1982, OSM promulgated final rules modifying the inspection, enforcement and civil penalty provisions of the permanent regulatory program. OSM made no change to the prepayment requirement.

On March 18, 1983, the Iowa Deputy Attorney General, on behalf of the DSC, informally submitted to OSM for review three alternative bills which would amend the Iowa statute concerning civil penalty assessment. On May 25, 1983,

