

Journal of the European Communities, L 294/1) (the EU Regulation) permitting the organization of a new public limited liability company, the Societas Europaea (SE). The EU Regulation entered into force on October 8, 2004. The general rules for the formation and operation of an SE provided by the EU Regulation are supplemented by the laws of the member country in which the SE has its registered office. On December 16, 2005, the IRS and Treasury Department published final regulations in the **Federal Register** (TD 9235) adding the SE to the per se corporation list. The preamble to TD 9388 stated incorrectly that the aktsionerno druzhestvo is Bulgaria's SE. In fact, the aktsionerno druzhestvo is a public limited liability company organized in Bulgaria. The IRS and Treasury Department continue to study issues related to the residence of an SE for application of relevant Federal income tax provisions, such as the same-country exception under section 954(c)(3) of the Code. Comments are requested.

#### Explanation of Provisions

No written comments were received from the public or the Small Business Administration on the temporary or proposed regulations. No public hearing was requested or held. Accordingly, these regulations finalize the proposed regulations without modification and remove the text of the temporary regulations from the Code of Federal Regulations.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply either. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is S. James Hawes of the Office of Associate Chief Counsel (International); however, other personnel from the IRS and the Treasury

Department participated in their development.

#### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 301.7701-2 is amended by:

■ 1. Adding an entry in alphabetical order to paragraph (b)(8)(i).

■ 2. Removing paragraph (b)(8)(vi).

■ 3. Revising paragraph (e)(7).

The revisions and addition read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(8) \* \* \*

(i) \* \* \*

Bulgaria, Aktsionerno Druzhestvo.

\* \* \* \* \*

(e) \* \* \*

(7) The reference to the Bulgarian entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after January 1, 2007, and to any such entity formed before such date from the date that, in the aggregate, a 50 percent or more interest in such entity is owned by any person or persons who were not owners of the entity as of January 1, 2007. For purposes of the preceding sentence, the term *interest* means—

(i) In the case of a partnership, a capital or profits interest; and

(ii) In the case of a corporation, an equity interest measured by vote or value.

#### § 301.7701-2T [Removed]

■ **Par. 3.** Section 301.7701-2T is removed.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 31, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 916

[SATS No. KS-024-FOR; Docket No. OSM-2008-0001]

#### Kansas Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving amendments to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kansas proposed revisions to its 2006 Revegetation Success Guidelines, Normal Husbandry Practices, and State Regulations. Kansas intends to revise its program to improve operational efficiency.

**DATES:** *Effective Date:* November 28, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Alfred L. Clayborne, Director, Tulsa Field Office, Telephone: (918) 581-6430, E-mail: [acclayborne@osmre.gov](mailto:acclayborne@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Kansas 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 Kansas program on January 21, 1981. You can find background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the

Kansas program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

## II. Submission of the Amendment

Kansas, by letter dated November 19, 2007 (Administrative Record Nos. 626 and 627), sent amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas submitted these amendments at its own initiative.

We announced receipt of Kansas' amendments in the January 23, 2008, **Federal Register** (73 FR 3894). We opened the public comment period and the public was provided an opportunity to submit comments or request a public hearing on the adequacy of Kansas' proposed amendments. No one requested a public hearing. The public comment period ended February 22, 2008.

On February 7, 2008, we notified Kansas by telephone (Administrative Record No. KS-626.08), of inconsistent and incorrect citations to specific regulations referenced within Kansas' 2006 Revegetation Success Guidelines and Normal Husbandry Practices. On February 7, 2008, Kansas submitted its newly promulgated regulations (Administrative Record No. 626.06), to correct those inconsistencies; however, the submitted regulations were not yet approved by us as part of the Kansas Program. On May 12, 2008, we reopened the public comment period to provide the public an opportunity to consider the adequacy of Kansas' revised regulations and to reconsider the original amendment in light of these revised regulations (73 FR 22888). Under the provisions of 30 CFR 732.17(h), we requested comments on whether the amendments satisfied the program approval criteria of 30 CFR 732.15. No one requested a public hearing. The public comment period ended May 28, 2008.

## III. OSM's Findings

The following are our findings concerning the submitted amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendments as described below.

### A. 2006 Revegetation Success Guidelines: Guidance Document

Kansas has adopted by reference significant parts of OSM's 2001 regulations, including 30 CFR parts 816, 817, and 823. Specifically, the 2001 Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid techniques for

measuring revegetation success and include them in its approved regulatory program.

OSM's approval of revegetation success guidelines has been eliminated at 30 CFR parts 816 and 817 (71 FR 51684). However, Kansas' approved program still requires our approval of its revegetation success standards. Therefore, Kansas has submitted its Revegetation Success Guidelines to us for approval in accordance with the State's approved regulatory program.

### Definitions

Kansas proposed to add the following definitions: Fish and wildlife habitat, forestry, industrial/commercial, pastureland, recreation, and residential. In addition, Kansas proposed to revise existing definitions: historically used for cropland, permanent, and previously mined.

The Federal regulations contain all of the above definitions proposed by Kansas. We are approving Kansas' proposed definitions because they are substantively the same as the Federal definitions at 30 CFR 701.5.

### Table 1. Revegetation Requirement for Pastureland and Grazingland Bond Release

Kansas, at Table 1, proposed to decrease the ground cover success standard for Phase II and Phase III bond release from 100 percent to 90 percent.

We find that the revision meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.117(a)(1) stating that standards for success shall be selected by the regulatory authority. Therefore, we approve this revision.

### Section I. Ground Cover Success Standard

Kansas proposed to change information and consolidate substantive provisions of its approved ground cover success standards for all land uses. Subsection A provides the success standard for ground cover on prime farmland cropland. Subsection B discusses the success standard for ground cover on cropland. Subsection C provides the success standard for ground cover on pastureland and grazingland. Subsection D contains the success standard for ground cover on pastureland and grazingland—no topsoil. Subsections E and F contain the success standards for ground cover for fish and wildlife habitat, recreation, shelter belts, and forest products land uses with or without topsoil, respectively. Subsection G contains specific success standards for ground

cover on industrial, commercial, or residential sites with or without topsoil.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover. Ground cover will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b), and 817.116(b) contain the minimum success standards for ground cover for each land use; however, the Federal regulations do not contain a specific ground cover success standard for prime farmland or cropland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Section I and found that Kansas' guidelines for ground cover success standards are no less effective than the requirements of the Federal regulations. Therefore, we approve these revisions.

### Section II. Ground Cover Sampling

Kansas proposed to make editorial and format changes to its approved ground cover success standards for all land uses in Section II. Subsection A. contains specific information regarding premine ground cover sampling criteria and techniques. Subsection B provides information on postmine ground cover sampling criteria and techniques. Kansas did not propose any substantive changes, therefore, we approve these revisions.

### Section III. Production Success Standards-Forage

Kansas revised and reformatting substantive provisions of this section regarding production success standards for forage. Subsection A discusses forage productivity standard databases. It requires the use of the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) crop yield databases for establishing forage production success standards. These databases list crop yields by

county and soil mapping units and can be found in the NRCS Soil Data Mart located at <http://soildatamart.nrcs.usda.gov/>. Section A also contains the productivity standards for prime farmland cropland forage crops, cropland forage crops, pastureland, and grazingland. For prime farmland, the permittee must meet 100 percent of the forage productivity standard. For cropland, 90 percent of the forage productivity standard must be met. For pastureland and grazingland, the applicant must demonstrate successful revegetation establishment in accordance with K.A.R. 47-8-9(a)(13) for Phase II and Phase III revegetation bond release.

Subsection B explains the method of calculation for converting the Animal Unit Month (A.U.M.) values listed in the NRCS *Nonirrigated Yield by Map Unit* database to pounds per acre of dry forage per growing season. Kansas reevaluated the A.U.M. value used in its previous guidance document for forage production. A conversion factor of 760 pounds of dry forage per A.U.M. is used.

Subsection C describes methods for data collection to assess forage productivity. The permittee may collect this data through a sampling program or through whole field harvest.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15 require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Productivity for prime farmland soils must equal or exceed the average yield of the reference crop established for the same period for the same or similar non-mined soils. Productivity for cropland, pastureland, and grazingland must, at a minimum, meet 90 percent of the success standard with a 90 percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for cropland, pastureland, and grazingland in which productivity must be equal to that of a reference area or such other success standards approved by the regulatory authority. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) and 823.15(b) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical

review of Section III and found that Kansas' guidelines for forage production are no less effective than the requirements of the Federal regulations. Therefore, we are approving them.

#### Section IV. Production Success Standards-Row Crops

Kansas revised and consolidated substantive provisions of its approved row crop production success standards for prime farmland and cropland. These success standards are based on the NRCS crop yield databases. Kansas will now rely upon the "Electronic Field Office Technical Guides (eFOTG)" found at <http://soildatamart.nrcs.usda.gov/>. Where a yield number has not been established for a particular crop in a particular soil mapping unit, the operator in conjunction with the Kansas Surface Mining Section (SMS), may establish a yield target based on the previously published county soil surveys and the NRCS database in Technical Guide Notice KS-145. The operator will also be required to submit a printout of the yield data generated for the permit, including the date the information was accessed, as part of the approved permit application package. Subsection A of this section discusses the acceptable row crops for determining revegetation productivity. Subsection B describes the acceptable method for calculating the row crop production success standard. Subsection C describes row crop sampling criteria. Subsection D describes the methods of data collection that permittees may choose to assess row crop productivity. Sections E and F describe productivity sampling criteria for prime farmland row crops and cropland row crops, respectively. Finally, Subsection G describes row crop sampling techniques for test plots and whole field sampling for grain sorghum (milo), wheat, soybeans, and corn.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15 require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Productivity for prime farmland soils must equal or exceed the average yield of the reference crop established for the same period for the same or similar non-mined soils. Productivity for

cropland must, at a minimum, meet 90 percent of the success standard with a 90 percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) and 823.15(b)(2) contain the minimum success standards for cropland in which productivity must be equal to that of a reference area or such other success standards approved by the regulatory authority. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) and 823.15(b) contain the minimum period of extended responsibility for successful revegetation.

The Federal regulations at 30 CFR 823.15(b)(2) allow soil productivity to be measured on a representative sample area or on all of the mined and reclaimed prime farmland. Kansas now allows productivity to be measured on a representative area or by whole field harvest. The Federal regulations at 30 CFR 823.15(b)(7)(ii) require that reference crop yields for a given crop season be determined using the average county yields recognized by the U.S. Department of Agriculture which have been adjusted by the U.S. Soil Conservation Service (now the NRCS) for local yield variation within the county. Kansas now refers directly to NRCS' on-line crop yield database to determine the yield target for a given permit. We conducted a technical review of the changes to Section IV and found that Kansas' guidelines for row crop production are no less effective than the requirements of the Federal regulations. Therefore, we are approving them.

#### Appendices

Kansas' revised revegetation guidance document contains seven appendices that support the provisions in Sections I through IV.

#### Appendix A, Plant Species List

Kansas revised its previously approved list of plant species. Appendix A lists the plant species that are unacceptable for all land uses except for selected species at areas acceptable for fish and wildlife habitat land use. It lists the acceptable tree species for fish and wildlife habitat, recreation areas, forest products, and shelter belt land uses. It also lists the acceptable shrub and vine species for fish and wildlife habitat, recreation areas, and shelter belt land uses. In addition, it lists the acceptable legume species based on land use for revegetation productivity and ground cover. Finally, it lists the acceptable grass species based on land use for revegetation productivity and ground cover.

The Federal regulations at 30 CFR 816.116(a), 817.116(a), and 823.15 contain the requirements for revegetation success standards. Kansas, by providing to the public a list of selected acceptable and unacceptable plant species and providing opportunity for public comment, has met Federal regulatory requirements. We are approving the revisions to Appendix A, Appendix C, Production Data

Kansas, at Appendix C, has adopted by reference the NRCS production data found in the NRCS Soil Data Mart located at <http://soildatamart.nrcs.usda.gov/>.

The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15 contain the requirements for revegetation success standards. Because Kansas revisions meet these requirements and based on our technical review and a concurrence letter from the NRCS, we are approving the revisions to Appendix C.

Appendix B, Animal Unit Month- Methods of Production Success Standard Calculations; Appendix D, Planting Reports; Appendix E, Reference Area Criteria; Appendix F, Representative Sample Field Area Definition and Test Plot Criteria; and Appendix G, Measuring Grain Moisture

Kansas either proposed no revisions or nonsubstantive revisions to the previously approved information contained in Appendices B, D, E, F, and G. We find that the information in these appendices continues to meet the requirements of 30 CFR 816.116(a)(1), 817.116(a)(1) and 823.15.

#### *B. Normal Husbandry Practices for Surface-Mined Lands in Kansas*

Kansas proposed to revise its existing husbandry practice regarding rills and gullies, and to add new husbandry practices for surface mined lands in Kansas. Kansas changed its husbandry practice guidelines for the repair of rills and gullies by updating the name of the United States Department of Agriculture's Soil Conservation Service to its current name of the NRCS, and to add further clarification to these guidelines.

Kansas added new husbandry practices for liming, fertilization, mulching, seeding or stocking (stems) following the reclamation of any temporary roads, temporary sediment or hydraulic control structures, or areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee.

Kansas added another approved husbandry practice stating that reliming

and/or refertilization of revegetated areas, reseeding cropland in annual crops; or renovating pastureland or cropland areas in perennial cover by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal husbandry practices used on unmined land within the region.

Kansas added another approved husbandry practice on postmining land uses of fish and wildlife habitat, recreation, and forestry, that allows disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions. Replanting of more than 20% of the trees/shrubs needed to meet the established technical success will restart the 5 year liability time clock. Trees and shrubs counted in determining the success of stocking shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for a minimum of three years.

In addition, Kansas added a list of approved husbandry practices from selected Kansas State University (KSU), NRCS, and Kansas Forestry publications. Kansas, in determining what is an approved selective husbandry practice, used SMS professional judgments, the incorporation of guidelines provided by approved source documents, and information provided by KSU and NRCS.

Kansas stated that the use of its selective husbandry practices will not result in an extension to the period of responsibility for revegetation success and bond liability and that the probability of permanent revegetation failure will not be increased if the approved practices are discontinued after expiration of the liability period. Practices not approved and which will result in an extension of the liability period include any seeding, fertilization, or irrigation performed at levels which exceed those normally applied in maintaining comparable unmined land in the surrounding area.

The Federal regulation at 30 CFR 816.116(c)(4), and 817.117(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period

of responsibility for revegetation success and bond liability. This Federal regulation also requires that normal husbandry practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, and that if such practices can be expected to continue as part of the postmining land use, or if they are discontinued after the liability period expires, the probability of permanent revegetation success will not be reduced. We are approving Kansas' normal husbandry practices because they are no less effective than the Federal regulation.

#### *C. Kansas Regulations*

Kansas proposed to revise the following previously approved regulations.

##### *1. K.A.R. 47-4-14a, Public Hearing*

a. Kansas made changes at K.A.R. 47-4-14a(c)(2) Document filing. Kansas deleted the language, "administrative appeals section of the Kansas department of health and environment, suite 400D, 109 SW 9th, Topeka, Kansas 66612-1215," and replaced it with the language, "office of administrative hearings, a division of the Kansas department of administration," indicating where all documents are to be filed regarding an administrative hearing. All other provisions of KAR 47-4-14a(c) were previously approved by OSM.

Based on our review of Kansas' public hearing and administrative appeals rules, we find that they are no less effective than the Federal regulations. Therefore, we are approving this section.

b. Kansas made changes at K.A.R. 47-4-14a(d)(2)(A) Presiding officer. Kansas proposed to delete, "the secretary or one or more other persons designated by the secretary," and add, "administrative hearing officer from the office of administrative hearings." Kansas proposed to delete paragraph (d)(2)(F) that allows for hearing officers from another state agency to conduct proceedings under these regulations.

The Federal regulation at 30 CFR 775.11(b) pertaining to administrative hearings under State programs does not contain a provision regarding presiding officers for administrative hearings. We find that the changes by Kansas are not inconsistent with the Federal regulations; therefore, we are approving them.

c. Kansas proposed to delete paragraph (d)(3)(A) that states, "a presiding officer shall be assigned by the department for the prehearing conference, exercising the same

discretion as is provided by subsection (d)(2) concerning the selection of a presiding officer for a hearing.”

The Federal regulations at 30 CFR 773.6(c) and 775.11(b) pertaining to informal conferences and administrative hearings, respectively, do not contain a provision regarding assigning presiding officers for prehearing conferences with the same discretionary powers as a presiding officer for a hearing. The Federal regulation at 30 CFR 775.11(b) does state that no person who presided at an informal conference under 30 CFR 773.6(c) shall either preside at the hearing or participate in the decision following the hearing or administrative appeal. We find that the changes by Kansas are not inconsistent with the Federal regulations; therefore, we are approving them.

## 2. K.A.R. 47–5–5a, Civil Penalties

a. Kansas made revisions at K.A.R. 47–5–5a(a)(4), Determination of amount of penalty, where it proposed to replace the table in 30 CFR 845.14, adopted by reference, with a new penalty table. The minimum proposed penalty is \$20 and increases to a maximum proposed penalty of \$5,000.

At K.A.R. 47–5–5a(a)(5), Assessment of separate violations for each day, Kansas adopted by reference 30 CFR 845.15, except that it decreased the minimum assessed civil penalty. The current Federal regulations specify a minimum penalty of \$1,025 for each day a violation continues. Kansas has reduced this to \$750 per day.

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are “no less stringent than” those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM’s regulations governing civil monetary penalties (CMPs), the U.S. District Court for the District of Columbia held that because Section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary of the Interior’s request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Instead, section 518(i) of the Act requires only the incorporation of penalties and procedures explained in section 518. The system proposed by the State must incorporate the four criteria

of section 518(a) of SMCRA: (1) History of previous violations, (2) seriousness of the violation, (3) negligence of the permittee, and (4) good faith of the permittee in attempting to achieve compliance. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4, 1980 (45 FR 51548) by suspending the requirement that penalties shall be consistent with 30 CFR part 845. Consequently, we cannot require that the CMP provisions contained in a State’s regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15.

We are approving Kansas’ revisions at K.A.R. 47–5–5a because they include the four criteria used in assessing penalties as identified in section 518(a) of SMCRA, consistent with the 1980 U.S. District Court decision. Furthermore, Kansas’ penalties are no less stringent than those set forth in section 518 of the Act.

b. At K.A.R. 47–5–5a(a)(13), Payment of penalty, Kansas adopted by reference 30 CFR 846.18 except that, for subsection (d), Kansas incorporated substantially identical language into its regulations. Kansas also incorporated into subsection (d) the language for 30 CFR 870.15(e) through (g) relating to payment of overdue fees. We approve these revisions because they are no less effective than the Federal regulations.

## 3. Federal Regulations That Kansas Adopted by Reference

Kansas regulations	Federal counterpart regulations
K.A.R. 47–5–5a(a)(9), Request for hearing.	30 CFR 845.19
K.A.R. 47–5–5a(a)(11), Amount of individual civil penalty.	30 CFR 846.14
K.A.R. 47–5–5a(a)(12), Procedure for assessment of individual civil penalty.	30 CFR 846.17

We are approving Kansas’ adoptions by reference of the above regulations because they are substantially the same as the Federal regulations.

## IV. Summary and Disposition of Comments

### Public Comments

We asked for public comments on the amendment, but did not receive any.

### Federal Agency Comments

On December 3, 2007, and February 21, 2008, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments from various agencies with an actual or potential

interest in Kansas’ revised 2006 Revegetation Success Guidelines and Normal Husbandry Practices, and its regulations (Administrative Record Nos. 626.06 and 626.12).

We received comments from three agencies, the U.S. Fish and Wildlife Service, the Kansas Ecological Services Field Office, and the Kansas State Historical Society. All three agencies indicated that they had no objections to Kansas’ proposed regulatory program changes.

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

We are required to get a written concurrence from the Environmental Protection Agency (EPA) under 30 CFR 732.17(h)(11)(ii), for those provisions of Kansas’ program amendments that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On December 3, 2007, and February 21, 2008, we requested comments on the proposed amendments from the EPA (Administrative Record Nos. KS–626.02 and 626.12). The EPA did not respond to our requests.

## V. OSM’s Decision

Based on the above findings, we are approving Kansas’ revisions to its 2006 Revegetation Success Guidelines and Normal Husbandry Practices submitted on November 19, 2007, and its regulations sent to us on February 7, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR part 916 which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## 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 Kansas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kansas 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 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 2008.

**Ervin J. Barchenger,**

*Regional Director, Mid-Continent Region.*

■ For the reasons set out in the preamble, 30 CFR part 916 is amended as set forth below:

**PART 916—KANSAS**

■ 1. The authority citation for part 916 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 916.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 916.15 Approval of Kansas regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
November 19, 2007.	November 28, 2008.	Revegetation Success Guidelines; Normal Husbandry Practices; Kansas Regulations: K.A.R. 47-4-14a(c)(2), (d)(2)(A), (d)(3)(A); K.A.R. 47-5-5a(a)(4), (a)(5), (a)(9), and (a)(11) through (a)(13).

[FR Doc. E8-28337 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 200

RIN 1810-AB01

[Docket ID ED-2008-OESE-0003]

#### Title I—Improving the Academic Achievement of the Disadvantaged

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Education is correcting a final regulation that was published in the **Federal Register** on October 29, 2008 (73 FR 64436). The final regulations clarified and strengthened the Title I regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.

**DATES:** Effective November 28, 2008.

**FOR FURTHER INFORMATION CONTACT:** Zollie Stevenson, Jr., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W230, Washington, DC 20202-6132. Telephone: (202) 260-1824.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or computer diskette) on request to the contact person listed under this section.

**SUPPLEMENTARY INFORMATION:** In FR Doc. E8-25270 appearing on page 64436 in the **Federal Register** on October 29, 2008, the following corrections are made:

#### § 200.7 [Corrected]

1. On page 64508, in the first column, in § 200.7, in amendment 3, instruction D is removed.

#### § 200.19 [Corrected]

2. On page 64508, in the second column, in § 200.19, in amendment 5, instruction B is corrected to read: “Removing paragraph (d) and redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively.”.

**Electronic Access to This Document:** You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>

Dated: November 24, 2008.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E8-28266 Filed 11-26-08; 8:45 am]

BILLING CODE 4000-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2008-0714; FRL-8388-9]

#### Diffubenzuron; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for combined residues of diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline in or on alfalfa, forage and alfalfa, hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on alfalfa and mixed grass/alfalfa fields. This regulation establishes a maximum permissible level for residues of diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline, in these food commodities. The time-limited tolerances expire and are revoked on December 31, 2011.

**DATES:** This regulation is effective November 28, 2008. Objections and requests for hearings must be received on or before January 27, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0714. All documents in the docket are listed in the docket index available in <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9364; e-mail address: [pemberton.libby@epa.gov](mailto:pemberton.libby@epa.gov).

**SUPPLEMENTARY INFORMATION:**