

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925**

[SPATS No. MO-033-FOR]

**Missouri Regulatory Program and Abandoned Mine Land Reclamation Plan****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, an amendment to the Missouri regulatory program (Missouri program) and the Missouri Abandoned Mine Land Reclamation Plan (Missouri plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposed revisions to its rules pertaining to surface mining performance standards, special mining activities, prohibitions and limitations on mining in certain areas and areas unsuitable for mining, permitting requirements, bond and insurance requirements, definitions and general requirements, and abandoned mine land reclamation requirements. Missouri intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

**EFFECTIVE DATE:** May 9, 2001.

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**I. Background on the Missouri Program and Plan**

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments,

and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

On January 29, 1982, the Secretary of the Interior approved the Missouri plan. Background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning the Missouri plan and amendments to the plan can be found at 30 CFR 925.25.

**II. Submission of the Amendment**

By letter dated October 5, 2000 (Administrative Record No. MO-662.1), Missouri sent us an amendment to its program and plan under SMCRA and the Federal regulations at 30 CFR 732.17(b) and 884.15, respectively. Missouri sent the amendment in response to our letter dated June 17, 1997 (Administrative Record No. MO-651), that we sent to Missouri under 30 CFR 732.17(c), and in response to required program amendments codified at 30 CFR 925.16. The amendment also includes changes made at Missouri's own initiative. Missouri proposed to amend the Missouri Code of State Regulations (CSR) at Title 10, Division 40.

We announced receipt of the amendment in the October 31, 2000, **Federal Register** (65 FR 64906). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on November 30, 2000. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to spillways, temporary impoundments, air resource protection, and the exemption for coal extraction incidental to the extraction of other minerals. We notified Missouri of these concerns by letter dated December 15, 2000 (Administrative Record No. MO-662.5).

By letter dated January 12, 2001 (Administrative Record No. MO-662.6), during a telephone conference on February 13, 2001 (Administrative Record No. MO-662.7), and by letter dated April 17, 2001 (Administrative Record No. MO-662.8), Missouri provided us additional explanatory information regarding its provisions for spillways. Because the additional information merely clarified Missouri's proposed spillway requirements, we did

not reopen the public comment period. In its letters, Missouri indicated that it would submit revisions to its rules relating to temporary impoundments, air resource protection, and the exemption for coal extraction incidental to the extraction of other minerals in a future rulemaking. Therefore, we are proceeding with the publication of this final rule **Federal Register** document.

**III. Director's Findings**

Following, under SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14, and 884.15, are the Director's findings concerning the amendment to the Missouri program and plan.

Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Missouri's Rules That Are Minor*

Missouri proposed minor wording, editorial, and rule reference changes to several previously-approved rules.

1. Missouri corrected rule references at 10 CSR 40-3.040(4)(A)1, 40-3.040(13)(A)1.A, 40-3.040(13)(B)1, 40-3080(3)(D), 40-3.200(12)(A)1.A, 40-3.200(12)(B)1, 40-4.010(3)(J), 40-4.020(2)(B), 40-4.050(11), 40-4.050(12), 40-6.020(7)(A), 40-6.050(9)(C)3, 40-6.050(9)(C)4, 40-6.070(8)(C), 40-6.070(8)(D)3, 40-6.090(6)(A), 40-6.090(7), 40-8.010(1)(A)97.B, 40-8.030(6)(A)3, 40-8.030(12)(C), and 40-8.070(2)(C)1.A(II).

2. At 10 CSR 40-4.030(3)(A), (6)(A), and (7)(B)2 and 7; 40-6.040(16)(C)1 and 3; and 40-6.060(4), Missouri corrected references to the United States Natural Resources Conservation Service (NRCS) by replacing the "United States Soil Conservation Service" and "SCS" with the current agency name and acronym, the "United States Natural Resources Conservation Service" and "NRCS," respectively. At 10 CSR 40-8.010(1)(A) 52.C, Missouri revised the secondary definition of "prime farmland" in its definition of "land use" by adding the information "(now known as the Natural Resources Conservation Service)" after the term "Soil Conservation Service."

3. Missouri corrected typographical errors at 10 CSR 40-3.080(8)(A), 40-6.070(5) (B)4, and 40-6.070(10)(D).

4. At 10 CSR 40-3.050, 40-4.010, 40-4.030, 40-6.020, and 40-8.050, Missouri revised the purpose statements to identify the topic and statutory authority of the rules.

Because the above revisions are minor and do not change the meaning of these previously approved rules, we find that they will not make Missouri's rules less effective than the counterpart Federal regulations.

*B. Revisions to Missouri's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

The State rules listed in the table contain language that is the same as or

similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal regulation
Impoundments: Examination .....	10 CSR 40-3.040(6)(T)/40-3.200(6)(T) .....	30 CFR 816.49(a)(12)/817.49(a)(12).
Impoundments: Stability .....	10 CSR 40-040(10)(L)1/40-3.200(10)(L)1 .....	30 CFR 816.49(a)(4)(i) 817.49(a)(4)(i).
Impoundments: Freeboard .....	10 CSR 40-3.04(10)(M)/40-3.200(10)(N) .....	30 CFR 816.49(a)(5)/817.49(a)(5).
Impoundments: Foundation .....	10 CSR 40-3.040(10)(N)/40-3.200(10)(N) .....	30 CFR 816.49(a)(6)/817.49(a)(6).
Impoundments: Spillways .....	10 CSR 40-3.040(10)(O), (O)1, (O)2.A/40-3.200.	30 CFR 816.49(a)(9), (9)(i), (9)(ii)(A)/817.49(A)(9), (9)(i), (9)(ii)(A).
Temporary Impoundments .....	10 CSR 40-3.040(10)(O)3, 3.A/40-3.200(10)(O)3, 3.A.	30 CFR 816.49(c)(2), (2)(i)/817.49(c)(2), (2)(i).
Blasting Schedule Contents .....	10 CSR 40-3.050(3)(C)1 .....	30 CFR 816.64(c)(1).
Disposal of Coal Processing Waste .....	10 CSR 40-3.080(1)(A) .....	30 CFR 816.81(a).
Backfilling and Grading: Thin Overburden .....	10 CSR 40-3.110(4)(A), (A)(1) and (2) .....	30 CFR 816.104(a), (a)(1) and (2).
Backfilling and Grading: Thick Overburden .....	10 CSR 40-3.110(5)(A), (A)(1) and 2 .....	30 CFR 816.105(a), (a)(1) and (2).
Operations on Prime Farmland: Applicability .....	10 CSR 40-4.030(4)(B) .....	30 CFR 823.11(a) and (b).
Prohibitions and Limitations on Mining in Certain Areas: Definition of Significant Recreational, Timber, Economic or Other Values Incompatible With Surface Coal Mining Operations.	10 CSR 40-5.010(1)(B) .....	30 CFR 761.5.
Prohibitions and Limitations on Mining in Certain Areas: Areas Where Mining is Prohibited or Limited.	10 CSR 40-5.010(2)(E) .....	30 CFR 761.11(e)(1).
Coal Exploration Permits: Commercial Use or Sale.	10 CSR 40-6.020(5) .....	30 CFR 772.14(a) and (b).
Geology Description .....	10 CSR 40-6.040(5)(B) 1.E .....	30 CFR 780.22(b)(2)(iii).
Probable Hydrologic Consequences Determination.	10 CSR 40-6.050(9)(D)3 .....	30 CFR 780.21(f)(4).
Cumulative Hydrologic Impact Assessment .....	10 CSR 40-6.050(9)(E)/40-6.120(5)(E) .....	30 CFR 780.21(g)/784.14(f).
Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.	10 CSR 40-6.050(11)(A), (A)2, (A)3, (B), (C), (F)/40-6.120(7)(A), (A)2, (A)3, (B)1, (C), (F)..	30 CFR 780.25(a), (a)(2), (a)(3), (b), (c), (f)/784.16(a), (a)(2), (a)(3), (b), (c), (f).
Prime Farmlands: Issuance of Permit .....	10 CSR 40-6.060(4)(E)5 .....	30 CFR 785.17(e)(5).
Self-Bonding .....	10 CSR 40-7.011(6)(D)2 C(II), (D)5.A and C .....	30 CFR 800.23(b)(3)(ii), (e)(1) and (4).
Bond Release Application: Notarized Statement of Accomplished Reclamation.	10 CSR 40-7.021(3)(D) .....	30 CFR 800.40(a)(3).
Definition of Approximate Original Contour .....	10 CSR 40-8.010(1)(A)9 .....	30 CFR 701.5.
Definition of Other Treatment Facilities .....	10 CSR 40-8.010(1)(A)59 .....	30 CFR 701.5.
Definition of Prime Farmland .....	10 CSR 40-8.010(1)(A)73 .....	30 CFR 701.5.
Definition of Regulatory Authority .....	10 CSR 40-8.10(1)(A)82 .....	30 CFR 701.5.
Small Operator's Assistance: Definition of Qualified Laboratory.	10 CSR 40-8.050(1) .....	30 CFR 795.3.
Small Operator Assistance: Eligibility for Assistance.	10 CSR 40-8.050(2)(B), (B)1 and 2 .....	30 CFR 795.6(a)(2), (a)(2)(i) and (ii).
Small Operator Assistance: Program Services and Data Requirements.	10 CSR 40-8.050(5)(A), (B)1 through 6 .....	30 CFR 795.9(a), (b)(1) through (6).
Small Operator Assistance: Applicant Liability ...	10 CSR 40-8.050(9)(A) (A)2 and 3 .....	30 CFR 795.12(a), (a)(2) and (3).
Termination of Jurisdiction .....	10 CSR 40-8.070(2)(F) and (G) .....	30 CFR 700.11(d)(1) and (2).

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

*C. 10 CSR 40-3 Performance Requirements for Surface and Underground Mining Operations*

1. *10 CSR 40-3.010(6) Buffer Zone Markers.* Missouri added a reference to 10 CSR 40-8.010(1)(A)13 in its rule for buffer zone markers. Missouri's rule at 10 CSR 40-8.010(1)(A)13 defines the term "buffer zone." Although the Federal regulation at 30 CFR 816.11(e)

for buffer zone markers does not contain a counterpart reference, we find that Missouri's reference to its approved definition of "buffer zone" will not make its rule at 10 CSR 40-3.010(6) less effective than the Federal regulation.

2. *10 CSR 40-3.020 Requirements for Casing and Sealing of Drilled Holes.* In its rules at 10 CSR 40-3.020(1) and (3), Missouri corrected a citation reference by changing 10 CSR 40.3.040(13) to 10 CSR 40-3.040(14). Missouri also added a reference to the rules of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 6. Coal mine operators in Missouri must

meet both the requirements of 10 CSR 40-3.040(14) and the Division of Geology and Land Survey's rules at 10 CSR 23, Chapter 6, in order to convert a drilled hole, borehole, or monitoring well into a water well. Missouri's rule at 10 CSR 40-3.040(14) contains provisions for transferring exploratory or monitoring wells for use as water wells. We find that changing the existing citation reference to 10 CSR 40-3.040(14) is appropriate because it is consistent with the reference to 30 CFR 816.41 in the counterpart Federal regulations at 30 CFR 816.13 and 816.15. The Federal regulation at 30

CFR 816.41 allows wells to be transferred to another party for further use if approved by the regulatory authority and if the transfer complies with State and local law. Therefore, we find that requiring coal mine operators to meet other State regulations relating to water wells, as well as the State counterpart to 30 CFR 816.41, will not make Missouri's rules at 10 CSR 40-3.010(1) and (3) less effective than the counterpart Federal regulations at 30 CFR 816.13 and 816.15.

3. *10 CSR 40-3.040 and 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance.* Missouri proposed several changes to its rules at 10 CSR 40-3.040 for surface mining operations and 10 CSR 40-3.200 for underground mining operations.

a. Missouri replaced all instances of the term "sedimentation ponds" with the term "siltation structures" in its rules at 10 CSR 40-3.040(2)(A), 40-3.040(6), 40-3.040(8), 40-3.040(17), 40-3.200(2)(A), 40-3.200(6), 40-3.200(8), and 40-3.200(16). On October 20, 1994, OSM replaced the term "sedimentation ponds" with the term "siltation structures" in many of its counterpart regulations (59 FR 53022). OSM did this because the term "siltation structures" provides a broader classification of structures for the control of sediment than the term "sedimentation ponds." For this reason and because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40-8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's changes will not make its rules less effective than the counterpart Federal regulations.

b. *10 CSR 40-3.040(4) and 10 CSR 3.200(4) Stream Channel Diversions.* On September 29, 1992, we required Missouri to amend its rules at 10 CSR 3.040(4) and 40-3.200(4) to require the certification of any design criteria set by the regulatory authority as required at 30 CFR 816.43(b)(4) and 817.43(b)(4). We codified this requirement at 30 CFR 925.16(f)(1). In response to this requirement, Missouri added the language "and any design criteria set by the director" at the end of 10 CSR 40-3.040(4)(B)3 and 40-3.200(4)(B)3. The revised rules require the design and construction of all stream channel diversions of perennial and intermittent streams to be certified by a qualified registered professional engineer as meeting the performance standards of the rules and any design criteria set by the director. We find that Missouri's revised rules at 10 CSR 40-3.040(4)(B)3 and 40-3.200(4)(B)3 are substantively identical to the counterpart Federal

regulations at 30 CFR 816.43(b)(4) and 817.43(b)(4), respectively. The revisions also satisfy the required amendment that was codified at 30 CFR 925.16(f)(1), which we are removing.

c. At 10 CSR 40-3.040(10)(A) and 40-3.200(10)(A), Missouri added the following new provision:

Furthermore, impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section.

We find that Missouri's new provision contains requirements that are substantively the same as the counterpart Federal regulation requirements at 30 CFR 816.49(a)(1) and 817.49(a)(1). Therefore, we are approving Missouri's revised rules at 10 CSR 40-3.040(10)(A) and 40-3.200(10)(A).

d. At 10 CSR 40-3.040(10)(B)5 and 40-3.200(10)(B)5, Missouri updated its reference to the requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) by changing the "United States Soil Conservation Service Practice Standards 378, Ponds, January 1991" to the "United States Natural Resources Conservation Service, Conservation Practice Standard, POND, CODE, No. 378, December 1998." We are approving this reference change because the December 1998 version of Practice Standard No. 378 is the current version issued by the Natural Resources Conservation Service for the State of Missouri.

e. Missouri added a new subsection at 10 CSR 40-3.040(10)(L) and 40-3.200(10)(L) entitled "Stability." As shown above in finding B, paragraphs (10)(L)1 are substantively the same as the counterpart Federal regulations. Paragraphs (10)(L)2 require an impoundment not meeting the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, to have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of the Natural Resources Conservation Service, Conservation Practice Standard 378, "Ponds," December 1998, and be less than 20 feet in height.

Missouri's rules provide for two alternatives to determine the stability of an embankment for impoundments that do not meet the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a). The first alternative requires that the slope stability of the earth embankment meet

the same 1.3 minimum static safety factor requirements for steady state seepage as found in 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii). The second alternative refers to the NRCS Practice Standard No. 378 design standards developed for Missouri in December 1998. On November 17, 2000, we conducted a technical review of these standards (Administrative Record No. MO-662.4). The NRCS Practice Standard No. 378 requires that slopes be 2.5H:1V or flatter with combined slopes being 6H:1V or flatter for an embankment. This is a conservative standard when compared to other approved design standards, usually 5H:1V. It further requires that the slopes be stable, even if flatter slopes are required. The slope stability evaluation must be based on soil mechanics analysis or past experience in the surrounding area. The Federal regulations at 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii) allow a regulatory authority to establish engineering design standards comparable to the 1.3 static safety factor for impoundments not meeting the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a). Our technical review of Conservation Practice Standard No. 378 found that its design standards are comparable to the 1.3 static safety factor required for these types of impoundments. Therefore, we find the proposed rules at 10 CSR 40-3.040(10)(L)2 and 40-3.200(10)(L)2 are no less effective than the counterpart Federal regulations at 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii), respectively.

f. Missouri added a new subsection at 10 CSR 40-3.040(10)(O) and 10 CSR 40-3.200(10)(O) entitled "Spillways."

(1) Missouri rules at 10 CSR 40-3.040(10)(O)2 and 40-3.200(10)(O)2 provide the spillway requirements for permanent and temporary impoundments. They specify the design precipitation events that the various types of impoundments must be designed and constructed to safely pass or contain. With the following differences, Missouri's rules at 10 CSR 40-3.040(10)(O)2 and 40-3.200(10)(O)2 are substantively the same as the counterpart Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9) for permanent and temporary impoundments with spillways.

(a) Missouri's rules at 10 CSR 40-3.040(10)(O)2.B and 40-3.200(10)(O)2.B contain the spillway design precipitation event requirements for permanent and temporary impoundments meeting or exceeding the size or other criteria of 30 CFR 77.216(a). Missouri's rules provide that

the required design precipitation event for this type of impoundment is a 100-year, 24-hour event or greater as specified by the director or commission.

The Federal regulations at 30 CFR 816.49(a)(9)(ii) and 817.49(a)(9)(ii) specify a 100-year, 6-hour or greater design precipitation event for this type of impoundment. We conducted a technical review and found that overall the two are generally accepted as comparable events (Administrative Record No. MO-662.4). The 100-year, 24-hour precipitation event will have a higher peak discharge than the 100-year, 6-hour precipitation event. This means that in Missouri, the spillways for this type of impoundment will be designed and constructed to safely pass the design precipitation event required by the Federal regulations. Therefore, we find Missouri's rules at 10 CSR 40-3.040(10)(O)2.B and 40-3.200(10)(O)2.B are no less effective than the counterpart Federal regulations at 30 CFR 816.49(a)(9)(ii) and 817.49(a)(9)(ii), respectively.

(b) Missouri's rules at 10 CSR 40-3.040(10)(O)2.C and 40-3.200(10)(O)2.C contain the spillway design precipitation event requirements for impoundments not meeting the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a). Missouri's rules provide that the required design precipitation event for this type of impoundment is as specified in Table 3 of the United States Natural Resources Conservation Service, Conservation Practice Standard 378, "Ponds," December 1998.

We conducted a technical review and found that Table 3 in Conservation Practice Standard 378 contains design criteria for principal and auxiliary spillways for small impoundments (Administrative Record No. MO-662.4). Table 3 includes requirements for sizing principal and auxiliary spillways for 10-year, 24-hour; 25-year, 24-hour; and 50-year, 24-hour design storm events. The requirements for impoundments with watersheds of 20 acres or less includes spillways designed for either a 10-year, 24-hour or 25-year, 24-hour design precipitation event. The Federal regulation standard at 30 CFR 816.49(a)(9)(ii)(C) and 817.49(a)(9)(ii)(C) for small impoundments is a 25-year, 6-hour or greater precipitation event. The peak flow resulting from a 10-year, 24-hour event will be slightly lower than the peak flow resulting from the 25-year, 6-hour event. A spillway for this type of impoundment must be designed to at least discharge the peak flow produced by the minimum design precipitation event specified in the Federal regulations. This issue was

discussed with Missouri during the February 13, 2001, telephone conference (Administrative Record No. MO-662.7). Missouri explained that its policy is to require operators to construct spillways for small impoundments that will meet a 25-year, 24-hour or greater precipitation event design standard. Missouri stated in its letter of April 17, 2001, that its rule at 10 CSR 40-3.040(6)(I) requires a minimum 25-year, 24-hour design event. Missouri indicated that it will add a provision to its rules at 10 CSR 40-3.040(10)(O) and 40-3.200(10)(O) that will require a minimum 25-year, 24-hour design storm event for any emergency or auxiliary spillway. Missouri further stated that until the future rule change becomes effective, it will not approve any temporary or permanent impoundments with an emergency spillway design event less than the 25-year, 24-hour event. Missouri's rule at 10 CSR 40-3.040(6)(I) for sedimentation ponds requires that an appropriate combination of principal and emergency spillways be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event or larger event required in the permit and plan. Our technical review found that a 25-year, 24-hour precipitation event will have a higher peak discharge than a 25-year, 6-hour precipitation event. This means that in Missouri, the spillways for small impoundments that control sediment will be designed and constructed to safely pass the minimum design precipitation event required by the Federal regulations at 30 CFR 816.49(a)(9)(ii)(2)(C) and 817.49(a)(9)(ii)(2)(C). We are approving Missouri's rules at 10 CSR 40-3.040(10)(O)2.C and 40-3.200(10)(O)2.C in combination with its policy letter dated April 17, 2001, and its rule at 10 CSR 40-40-3.040(6)(I) that requires operators to design and construct spillways for impoundments that will safely pass a 25-year, 24-hour or greater precipitation event.

(2) Missouri's rules at 10 CSR 40-3.040(10)(O)3 and 40-3.200(10)(O)3 provide the requirements for temporary impoundments that rely solely on storage capacity to control runoff from a design precipitation event. They specify the design precipitation events that the impoundments must be designed and constructed to contain. With the following differences, Missouri's rules at 10 CSR 40-3.040(10)(O)3 and 40-3.200(10)(O)3 are substantively the same as the counterpart Federal regulations at 30 CFR 816.49(c) and 817.49(c) for temporary impoundments that rely

primarily on storage to control the runoff from a design precipitation event.

(a) Missouri's rules at 10 CSR 40-3.040(10)(O)3.B and 40-3.200(10)(O)3.B contain the design precipitation event requirements for temporary impoundments, with no spillways, that do not meet the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a). These impoundments rely primarily on storage to control the runoff from a design precipitation event. Missouri's rules specify that this type of temporary impoundment shall be designed to control the precipitation of a 100-year, 24-hour event.

The Federal regulations at 30 CFR 816.49(c)(2)(ii) and 817.49(c)(2)(ii) specify a 100-year, 6-hour or greater event for this type of temporary impoundment. As discussed above under finding 3(f)(1)(a), we determined that 100-year, 6-hour and 100-year, 24-hour events are generally accepted as comparable design precipitation events. However, the total runoff from the 100-year, 24-hour precipitation event will be larger than from a 100-year, 6-hour event with a similar return period. This means that in Missouri, temporary impoundments without spillways that do not meet the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) will be designed and constructed to safely control the runoff from the minimum design precipitation event required by the Federal regulations. Therefore, we find that Missouri's rules at 10 CSR 40-3.040(10)(O)3.B and 40-3.200(10)(O)3.B are no less effective than the counterpart Federal regulations at 30 CFR 816.49(c)(2)(ii) and 817.49(c)(2)(ii).

(b) Missouri's rules at 10 CSR 40-3.040(10)(O)3.C and 40-3.200(10)(O)3.C provide spillway design, precipitation event requirements for permanent and temporary impoundments. These paragraphs do not contain any requirements for temporary impoundments that rely solely on storage capacity to control the runoff from a design precipitation event, which is the intended purpose of the provisions in 10 CSR 40-3.040(10)(O)3 and 40-3.200(10)(O)3. Instead, they contain the same requirements as Missouri's proposed rules at 10 CSR 40-3.040(10)(O)2.C and 40-3.200(10)(O)2.C for impoundments that rely on spillways to safely pass the applicable design precipitation event.

We find that Missouri's rules at 10 CSR 40-3.040(10)(O)3.C and 40-3.200(10)(O)3.C are not consistent with the other requirements of Missouri's rules at 10 CSR 40-3.040(10)(O)3 and 40-3.200(10)(O)3 or with the Federal

regulation requirements at 30 CFR 816.49(c) and 817.49(c) for temporary impoundments that rely primarily on storage to control the runoff from a design precipitation event. Further, we are requiring Missouri to remove these provisions from its program. In its January 12, 2001, letter, Missouri indicated that the two paragraphs (10 CSR 40-3.040(10)(O)3.C and 10 CSR 40-3.200(10)(O)3.C) were inappropriate in this part of its program and will be deleted in a future rulemaking.

g. *10 CSR 40-3.040(14) and 10 CSR 40-3.200(13)(B) Transfer of Wells.* Missouri revised 10 CSR 40-3.040(14)(B)3 and 40-3.200(13)(B)3 to require that upon transfer of a well, the transferee must assume primary responsibility for compliance with 10 CSR 40-3.020 and 40-3.180, respectively, and those rules of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3, applicable to the well. The current rules just require compliance with 10 CSR 40-3.020 and 40-3.180, which are counterparts to the Federal regulations at 30 CFR 816.13 through 15 and 817.13 through 15, respectively. The Wellhead Protection Section, Division of Geology and Land Survey rules provide requirements that owners must meet for protection of groundwater quality and resources and maintenance of wells. The Federal regulations at 30 CFR 816.41(g) and 817.41(g) allow wells to be transferred to another party for further use if approved by the regulatory authority and if the transfer complies with State and local law. Therefore, we find that requiring coal mine operators to meet other State regulations relating to water wells will not make Missouri's rules at 10 CSR 40-3.040(14)(B)3 and 40-3.200(13)(B)3 less effective than the counterpart Federal regulations.

4. *10 CSR 40-3.050 Requirements for the Use of Explosives.* At 10 CSR 40-3.050(1)(D)1.A, Missouri proposes to clarify that an operator must submit a blast design if blasting operations will be conducted within 1000 feet of a dam that is outside the permit area. At 10 CSR 40-3.050(2)(A), Missouri proposes to clarify that the operator must notify owners of dams that are located within one-half mile of the permit area at least forty days before initiation of blasting and tell them how to request a preblast survey.

Missouri's currently approved rules require a blast design for dams and an opportunity for a preblasting survey for owners of dams because of each rule's reference to structures listed in 10 CSR 40-3.050(5)(D)1. The structures listed in 10 CSR 40-3.050(5)(D)1 include dams.

We find that Missouri's clarification of its rules at 10 CSR 40-3.050(1)(D)1.A and 10 CSR 40-3.050(2)(A) will not make them less effective than the counterpart Federal regulations at 30 CFR 816.61(d)(i) and 816.62(a), respectively.

5. *10 CSR 40-3.090, Surface Mining Operations, and 10 CSR 40-3.240, Underground Mining Operations: Air Resource Protection.* On September 29, 1992, we required Missouri to amend its rules at 10 CSR 40-3.090 and 40-3.240 by providing performance standards that address air quality in a manner no less effective than the Federal regulations at 30 CFR 816.95(a) and 817.95(a). We codified this requirement at 30 CFR 925.16(p)(4). The Federal regulations require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

a. Missouri revised 10 CSR 40-3.090 by adding the following new provision at the end of the previously approved rule language:

All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion according to 10 CSR 40-3.040(5)(A).

We find that Missouri's new provision at 10 CSR 40-3.090 is substantively identical to the Federal regulation requirement for protection of air resources at 30 CFR 816.95(a), and we are approving it. Missouri's new provision also satisfies a portion of the required amendment that we codified at 30 CFR 925.16(p)(4), and it will be modified accordingly.

b. Missouri removed the existing requirements at 10 CSR 40-3.240 and added the following new requirement:

All exposed surface areas shall be protected attendant to erosion according to 10 CSR 40-3.200(5)(A).

The counterpart Federal regulation at 30 CFR 817.95(a) requires all exposed surface areas to be protected "and stabilized to effectively control erosion and air pollution" attendant to erosion. We find that Missouri's revised rule at 10 CSR 40-3.240 is less effective than the Federal regulation because it is missing pertinent requirements relating to control of erosion and air pollution. Therefore, we are not approving Missouri's revised rule to the extent that it is missing these requirements, and we are modifying 30 CFR 925.16(p)(4) to require further revision to 10 CSR 40-3.240.

6. *10 CSR 40-3.110(6) Regrading or Stabilizing Rills and Gullies.* On July 13, 1995 (60 FR 36046), we required Missouri to revise 10 CSR 40-3.110(6)(B) to clearly require, for areas

that have been previously mined, either topsoil or a topsoil substitute, in accordance with its rules at 10 CSR 40-3.030. We codified this requirement at 30 CFR 925.16(q)(2). In response to this requirement, Missouri revised 10 CSR 40-3.110(6)(B) to read as follows:

On areas that have been previously mined, the requirements for regrading or stabilizing rills and gullies pursuant to subsection (6)(A) apply after final grading and placement of topsoil or the best available topsoil substitute.

We find that Missouri's revised rule at 10 CSR 40-3.110(6)(B) meets the requirements of the Federal regulations at 30 CFR 816.106(a) and 816.102(d)(2) concerning redistribution of topsoil on previously mined areas, and we are approving it. We also find that Missouri's revision satisfies the required amendment at 30 CFR 925.16(q)(2), which we are removing.

7. *10 CSR 40-3.120 and 10 CSR 40-3.270 Revegetation Requirements.* Missouri proposed several changes to its rules at 10 CSR 40-3.120 for surface mining operations and 10 CSR 40-3.270 for underground mining operations.

a. *10 CSR 40-3.120(5) and 10 CSR 40-3.270(5) Grazing.* On September 29, 1992 (60 FR 44666), we required Missouri to revise 10 CSR 40-3.120(5) and 40-3.270(5) by removing or defining the term "range land." We codified this requirement at 30 CFR 925.16(p)(5). In response to this requirement, Missouri removed the term "range land" from its provisions for grazing at 10 CSR 40-3.120(5) and 40-3.270(5).

Based on the discussion in finding 19 of the September 29, 1992, **Federal Register** (57 FR 44665), we find that, with the removal of the term "range land," Missouri's requirements at 10 CSR 40-3.120(5) and 40-3.270(5) for grazing and pasture land are no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(1) and 817.116(b)(1), respectively. We also find that Missouri has satisfied the required amendment at 30 CFR 925.16(p)(5), which we are removing.

b. *10 CSR 40-3.120(8) and 10 CSR 40-3.270(8) Reclamation Schedule.* Missouri replaced all instances of the term "sedimentation ponds" with the term "siltation structures" in its rules at 10 CSR 40-3.120(8)(A)4, (B), and (D) and 10 CSR 40-3.270(8) (A)4 and (B). Because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40-8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's changes will not make its rules less effective than the

counterpart Federal regulations. Also, because the term "siltation structures," as defined, includes a broader range of sediment control structures than the term "sedimentation ponds," we find that Missouri's revisions clarify that all sediment control structures, not just sedimentation ponds, are included in the reclamation schedule requirements.

8. *10 CSR 40-3.140 Road and Other Transportation Requirements.* On September 29, 1992 (60 FR 44669), we required Missouri to revise 10 CSR 40-3.140(1)(A) by requiring that all exposed surfaces be stabilized in accordance with current prudent engineering practices. We codified this requirement at 30 CFR 925.16(p)(9). In response to this requirement, Missouri removed the word "road" from the phrase "as well as dust occurring on other exposed road surfaces." Missouri's revised rule at 10 CSR 40-3.140(1) (A) now requires that Class 1 roads be maintained to control or prevent erosion; siltation; and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces.

Because the Federal regulation at 30 CFR 816.150(b)(1) provides the same requirements for roads, we find that Missouri's revised rule is no less effective than the Federal regulation. We also find that Missouri has satisfied the required amendment at 30 CFR 925.16(p)(9), which we are removing.

*D. 10 CSR 40-6 Permitting Requirements for Permits, Permit Applications, and Coal Exploration*

1. *10 CSR 40-6.010(4)(B)2 Renewal of Valid Permits.* Missouri corrected a citation reference in its existing provision at 10 CSR 40-6.010(4)(B)2 by changing "10 CSR 40-6.080(5) and (6)" to "10 CSR 40-6.090(5) and (6)." Missouri also added the following new provision to the end of 10 CSR 40-6.010(4)(B)2:

A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

As revised, the existing provision in 10 CSR 40-6.010(4)(B)2 requires a permittee to file an application for renewal of a permit under 10 CSR 40-6.090(5) and (6) at least 120 days before the expiration of the permit. The corrected citation reference is appropriate because 10 CSR 40-6.090(5) and (6) contain Missouri's requirements

for permit renewals. This provision is substantively the same as the Federal regulation at 30 CFR 774.15(b)(1). Missouri's new provision in 10 CSR 40-6.010(4)(B)2 is substantively the same as the counterpart Federal provision in 30 CFR 773.11(a). Based on the above discussion, we find that Missouri's provisions at 10 CSR 40-6.010(4)(B)2 are no less effective than the counterpart Federal regulation provisions at 30 CFR 774.15(b)(1) and 773.11(a), respectively.

2. *10 CSR 40-6.010(6)(A) Permit Fees.* Missouri removed the existing third sentence that specified that "[a]ll permits shall be on a yearly basis and shall require the entire initial fee and the acreage fee for that year." Missouri also revised the existing fifth sentence to read as follows:

Afterwards and until the operator obtains the final liability release on all lands covered by the permit, the annual fee and acreage fee shall be paid as a condition to and prior to operating for that permit year.

Missouri's removal of the existing third sentence eliminates an apparent conflict with other provisions in the rule that allow multiple year permits. Missouri revised the existing fifth sentence to clarify that the annual fee and acreage fee must be paid until the operator obtains the final liability release on all permitted acres. The Federal regulation at 30 CFR 777.17 requires the regulatory authority to determine the amount of the permit application fee and allows the regulatory authority to develop procedures for the fee to be paid over the term of the permit. Based on the above discussion, we find that Missouri's revisions will not make its previously approved rule less effective than the counterpart Federal regulation.

3. *10 CSR 40-6.030 and 10 CSR 40-6.100 Minimum Requirements for Legal, Financial, Compliance and Related Information.* We are approving Missouri's proposed revisions to its rules at 10 CSR 40-6.030 for surface mining operations and 10 CSR 40-6.100 for underground mining operations. Missouri proposed the revisions to clarify previously approved provisions or to meet the required amendments codified at 30 CFR 925.16(p)(10) and (11) on September 29, 1992.

On December 19, 2000 (65 FR 79582), we revised the Federal counterparts to the rules that Missouri is proposing to amend. Because Missouri submitted its amendment before the date that we published our new regulations, we are using previous versions of the Federal regulations as our standards of comparison. In accordance with the requirements and procedures in 30 CFR

732.17(d) through (f), we will notify Missouri at a later time if we determine that our revised regulations will require additional revisions to the Missouri program.

a. Missouri clarified the introductory paragraph of 10 CSR 40-6.030(1)(C) by adding the phrase "each application shall contain" after the words "as applicable." The revised paragraph reads as follows:

For each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), as applicable each application shall contain—

We find that Missouri's clarification did not change the meaning of this previously approved rule. We also find that the introductory paragraph of 10 CSR 40-6.030(1)(C) is substantively the same as the introductory paragraph of the former Federal regulation at 30 CFR 778.13(c) that was promulgated on April 21, 1997.

b. Missouri revised the introductory paragraph of 10 CSR 40-6.030(1)(D) to read as follows:

For any surface coal mining operation owned or controlled by the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), each application shall contain—

We find that Missouri's revised introductory paragraph is substantively the same as the introductory paragraph of the former Federal regulation at 30 CFR 778.13(f) that was promulgated on April 21, 1997.

c. *10 CSR 40-6.030(1)(I) and 10 CSR 40-6.100(1)(I) Identification of Interests and Violation Information Format.* On September 29, 1992 (57 FR 44671), we required Missouri to revise its rules to require that a permit applicant submit ownership and control and violation information in a format prescribed by OSM. We codified this requirement at 30 CFR 925.16(p)(10). In response to this requirement, Missouri revised its rules at 10 CSR 40-6.030(1)(I) and 40-6.100(1)(I) to require the applicant to submit the information required by 10 CSR 40-6.010(1) and (2) and 40-6.100(1) and (2) in any prescribed format issued by the "Office of Surface Mining Reclamation and Enforcement (OSMRE)."

We find that Missouri's revised rules at 10 CSR 40-6.030(1)(I) and 40-6.100(1)(I) are substantively the same as the former Federal regulation at 30 CFR 778.13(l) that was promulgated on April 21, 1997, and they satisfy the required amendment at 30 CFR 925.16(p)(10), which we are removing.

d. *10 CSR 40-6.030(2)(C) Surface Mining Permit Applications—*

*Compliance Information.* On September 29, 1992 (57 FR 44671), we required Missouri to revise 10 CSR 40–6.030(2)(C) to require any violation of SMCRA to be listed by the operator to make this regulation no less effective than the Federal regulation at 30 CFR 778.14(c). We codified this requirement at 30 CFR 925.16(p)(11). In response to this requirement, Missouri revised 10 CSR 40–6.030(2)(C) to read as follows:

A list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated violation notices received prior to the date of the application by any surface coal mining and reclamation operation that is deemed or presumed to be owned or controlled by the applicant under the definition of “owned or controlled” and “owns or controls” in 10 CSR 40–6.010(2)(E) of this chapter. For each notice of violation issued pursuant to 10 CSR 40–8.030(7) or under the Federal or State program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

A. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

B. A brief description of the violation alleged in the notice;

C. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

D. The current status of the proceedings and of the violation notice; and

E. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

We find that Missouri’s revised rule at 10 CSR 40–6.030(2)(C) is substantively the same as the former counterpart Federal regulation at 30 CFR 778.14(c) that was promulgated on April 21, 1997. Missouri’s revised rule also satisfies a portion of the required amendment at 30 CFR 925.16(p)(11), which we are removing.

*e. 10 CSR 40–6.100(2)(C)*

*Underground Mining Permit*

*Applications—Compliance Information.* On September 29, 1992 (57 FR 44671), we required Missouri to revise 10 CSR 40–6.100(2)(C) to require any violation of SMCRA to be listed by the operator to make this regulation no less effective than the Federal regulation at 30 CFR

778.14(c). We codified this requirement at 30 CFR 925.16(p)(11). In response to this requirement, Missouri revised 10 CSR 40–6.100(2)(C) to read as follows:

For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violations notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

2. A brief description of the violation alleged in the notice;

3. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

4. The current status of the proceedings and of the violation notice; and

5. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

We find that Missouri’s revised rule at 10 CSR 40–6.100(2)(C) is substantively the same as the former counterpart Federal regulation at 30 CFR 778.14(c) that existed on September 29, 1992, the date that we required Missouri to revise its rule. Missouri’s revision also satisfies the remaining portion of the required amendment at 30 CFR 925.16(p)(11) by requiring that “any violation of a provision of the Act” be listed by the operator. Missouri’s rule at 10 CSR 40–8.010(1)(A)3 defines “Act” to mean SMCRA.

4. *10 CSR 40–6.050 and 10 CSR 40–6.120 Minimum Requirements for Reclamation and Operations Plan.* Missouri proposed changes to its rules at 10 CSR 40–6.050 for surface mining operations and 10 CSR 40–6.120 for underground mining operations.

a. Missouri changed the term “sedimentation pond” to the term “siltation structure” in its rules at 10 CSR 40–6.050(5)(B)11, 40–6.050(5)(C)1, 40–6.120(14)(B)10, and 40–

6.120(14)(C)1. Because sedimentation ponds are included in the Missouri and the Federal definitions of “siltation structure” at 10 CSR 40–8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri’s changes will not make its rules less effective than the counterpart Federal regulations. Also, because the term “siltation structures,” as defined, includes a broader range of sediment control structures than the term “sedimentation ponds,” we find that Missouri’s revisions clarify that all sediment control structures must be shown on the maps and plans of the proposed mine operation.

b. *10 CSR 40–6.050(5) Operations Plan—Maps and Plans.* At 10 CSR 40–6.050(5) (C), Missouri removed the provision that would allow, with certain exceptions, a professional geologist experienced in the design and construction of impoundments to prepare and certify maps, plans, and cross-sections required under 10 CSR 40–6.050(5) (B)4, 5, 6, 10, and 11. As revised, Missouri’s rule requires all maps, plans, and cross-sections to be prepared and certified by a qualified registered professional engineer, with assistance from experts in related fields such as land surveying and landscape architecture.

With identified exceptions, the counterpart Federal regulation at 30 CFR 780.14(c) requires a qualified registered professional engineer, a professional geologist, or a qualified registered professional land surveyor to prepare and certify the specified cross sections, maps, and plans. A qualified registered professional engineer must certify maps, plans, and cross-sections for the identified exceptions, which include impoundments, siltation structures, excess spoil disposal sites, and coal mine waste disposal sites. Because only a qualified registered professional engineer can prepare and certify the specified cross sections, maps, and plans under the Missouri rule, we find that Missouri’s revised rule at 10 CSR 40–6.050(5)(C) is no less effective than the counterpart Federal regulation.

c. *10 CSR 40–6.050(7) and 40–6.120(12) Fish and Wildlife Plan.* On July 13, 1995 (60 FR 36047), we required Missouri to revise 10 CSR 40–6.050(7)(D)1 and 40–6.120(12)(D)1 to require that the description in the fish and wildlife plan be consistent with, respectively, its performance standards for protection of fish, wildlife, and related environmental values at 10 CSR 40–3.100 and 40–3.250. We codified this requirement at 30 CFR 925.16(u). At 10 CSR 40–6.050(7)(D)1, Missouri proposed to require that each fish and



wildlife plan description be consistent with the requirements of 10 CSR 40-6.050 and 40-3.100. At 10 CSR 40-6.120(12)(D)1, Missouri proposed to require that each fish and wildlife plan description be consistent with the requirements of 10 CSR 40-6.120 and 40-3.250. Missouri's rules at 10 CSR 40-3.100 for surface coal mining and 40-3.250 for underground coal mining contain performance requirements for the protection of fish, wildlife, and related environmental values.

We find that Missouri's revised rules at 10 CSR 40-6.050(7)(D)1 and 40-6.120(12)(D)1 are substantively the same as the counterpart Federal regulations at 30 CFR 780.16(b)(1) and 784.21(b)(1), respectively, and we are approving them. We also find that Missouri's revisions satisfy the required amendment at 30 CFR 925.16(u), which we are removing.

d. *10 CSR 40-6.050(11) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.* At 10 CSR 40-6.050(11)(A)1.A, Missouri removed the provision that would allow a professional geologist to prepare and certify a general plan for each siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the mine plan area. As revised, Missouri's rule requires general plans for these structures to be prepared and certified by a qualified registered professional engineer, with assistance from experts in related fields such as land surveying and landscape architecture.

The counterpart Federal regulation at 30 CFR 780.25(a)(1)(i) requires a qualified registered professional engineer, a professional geologist, or a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture, to prepare and certify general plans for these structures. Because use of the word "or" in the Federal regulation would allow any one of the listed professionals to prepare and certify general plans, we find that Missouri's revised rule at 10 CSR 40-6.050(11)(A)1.A is no less effective than the counterpart Federal regulation at 30 CFR 780.25(a)(1)(i).

e. *10 CSR 40-6.050(17) and 40-6.120(15) Transportation Facilities.* On September 29, 1992 (57 FR 44671), we required Missouri to provide proof that land surveyors are authorized in the State to prepare and certify plans and drawings for road design or delete the provision from 10 CSR 40-6.050(17)(B) and 40-6.120(15)(B). We codified this requirement at 30 CFR 925.16(p)(12). In response to this requirement, Missouri removed the language "or a qualified

registered professional land surveyor" from its provisions at 10 CSR 40-6.050(17)(B) and 40-6.120(15)(B). Missouri's revised rules require the plans and drawings for each class I and II road to be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

In those States that do not authorize land surveyors to certify the design of roads, the Federal regulations at 30 CFR 780.37(b) and 784.24(b) require the plans and drawings for roads to be prepared by, or under the direction of, and certified by a qualified registered professional engineer. Therefore, we find that Missouri's revised rules at 10 CSR 40-6.050(17)(B) and 40-6.120(15)(B) are no less effective than the counterpart Federal regulations at 30 CFR 780.37(b) and 784.24(b), respectively. We also find that Missouri's revisions satisfy the requirements of 30 CFR 925.16(p)(12), which we are removing.

5. *10 CSR 40-6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions.*

a. *10 CSR 40-6.070(3) Opportunity for Submission of Written Comments on Permit Applications.* At 10 CSR 40-6.070(3)(B), Missouri proposed to require that written comments on permit applications by public entities notified under subsections (2)(B) and (C) be submitted to the commission and director within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A). Missouri previously required that written comments be submitted within 60 days after the application is filed.

The counterpart Federal regulation at 30 CFR 773.13(b)(1) requires that written comments on permit applications by these public entities be submitted within a reasonable time established by the regulatory authority. We find that Missouri's proposed time frame is reasonable, and we are approving the revisions to 10 CSR 40-6.070(3)(B).

b. *10 CSR 40-6.070(4) Right to File Written Objections.* At 10 CSR 40-6.070(4) (A), Missouri is proposing to require that written objections to an initial, renewed, or revised application for a permit be filed within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A). Missouri previously required that written objections be filed within 60 days after the application is filed.

Missouri's revised rule contains substantively the same requirements for filing written objections as the counterpart Federal regulation at 30 CFR 773.13(b)(2), including the 30-day

time frame. Therefore, we find that Missouri's rule at 10 CSR 40-6.070(4)(A) is no less effective than the Federal regulation.

6. *10 CSR 40-6.090(4) Permit Revisions.* Missouri is revising 10 CSR 40-6.090 (4)(B)2 to read as follows:

The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be sufficient to demonstrate compliance with all applicable rules. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 10 CSR 40-6.030, 10 CSR 40-6.040, 10 CSR 40-6.050, 10 CSR 40-6.060, 10 CSR 40-6.100, 10 CSR 40-6.110 or 10 CSR 40-6.120 or in the conditions of the original permit, at a minimum, shall be subject to the requirements of 10 CSR 40-6.070 and 10 CSR 40-6.080.

Missouri's rule at 10 CSR 40-6.070 contains requirements for review, public participation, and approval of permit applications. It includes Missouri's provisions for permit terms and conditions. Missouri's rule at 10 CSR 40-6.080 contains requirements for administrative and judicial review of decisions on permit applications.

The Federal regulation at 30 CFR 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application information requirements and procedures, including notice, public participation, and notice of decision requirements shall apply. We find that Missouri's revised rule at 10 CSR 40-6.090(4)(B)(2) is consistent with this Federal requirement, and we are approving it.

E. *10 CSR 40-7 Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations*

1. *10 CSR 40-7.011(6) Bond Requirements—Type of Bonds.* On September 29, 1992 (57 FR 44673), we required Missouri to revise its rule at 10 CSR 40-7.011(6)(D)8 to provide that, upon issuance of a cessation order, mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted as required by the Federal regulations at 30 CFR 800.16(e)(2). We codified this requirement at 30 CFR 925.16(p)(14). In response to this requirement, Missouri revised its rule provisions at 10 CSR 40-7.011(6)(A)8 for surety bonds and 10 CSR 40-7.011(6)(D)8 for self-bonds to require that when a cessation order is issued for failure to replace bond coverage, mining operations shall not resume until the director has determined that an acceptable bond has been posted.



Missouri's revised provisions at 10 CSR 40-7.011(6)(A)8 and 40-7.011(6)(D)8 have substantively the same requirements for replacing bond coverage as the counterpart Federal regulations at 30 CFR 800.16(e) for surety bonds and 800.23(g) for self-bonds. Therefore, Missouri's revised rules are no less effective than the counterpart Federal regulations. Missouri's revision to 10 CSR 40-7.011(6)(D)(8) satisfies the required amendment at 30 CFR 925.16(p)(14), which we are removing.

2. *10 CSR 40-7.021 Duration and Release of Reclamation Liability.*

a. *10 CSR 40-7.021(1)(C) and (D)/40-7.021(2)(B)5 and 6 Termination of Jurisdiction.* On September 29, 1992 (57 FR 44674), we required Missouri to relocate its provisions at 10 CSR 40-7.021(2)(B)5 and 6 that addressed termination of jurisdiction to an appropriate location in its regulations. Missouri had placed these provisions under its phase II bond release requirements. We were concerned that this location could lead to possible misinterpretation of the requirements for phase II bond release and termination of jurisdiction. We codified this requirement at 30 CFR 925.16(p)(16). In response to the required amendment, Missouri removed its provisions from 10 CSR 40-7.021(2)(B)5 and 6 and added them to 10 CSR 40-7.021(1)(C) and (D) under its period of liability requirements.

As discussed in finding 51 of the September 29, 1992, **Federal Register**, Missouri's rules for termination of jurisdiction are substantively the same as the counterpart Federal regulations at 30 CFR 700.11(d). Both the Federal regulations and Missouri's rules clarify the circumstances under which a regulatory authority may terminate or reassert jurisdiction for the reclaimed sites of completed surface coal mining and reclamation operations. Because regulatory jurisdiction may only be terminated upon the final release of a performance bond or, where no bond was required, upon a finding that all reclamation had been successfully completed, we find locating these provisions under its requirements concerning the period of reclamation liability at 10 CSR 40-7.021(1) is appropriate. Therefore, we are approving Missouri's deletion of 10 CSR 40-7.021(2)(B)5 and 6 and addition of 10 CSR 40-7.021(1)(C) and (D). We are also removing the required amendment at 30 CFR 925.16(p)(16).

b. *10 CSR 40-7.021(2) Criteria for Release of Reclamation Liability.* Missouri replaced the term "sediment ponds" with the term "siltation

structures" in its rule at 10 CSR 40-7.021(2)(A). The revised provision provides that phase I bond must be retained on unreclaimed temporary structures, such as roads, siltation structures, diversions and stockpiles.

Because the term "siltation structures," as defined in Missouri's rules at 10 CSR 40-8.010(1)(A)89 and the Federal regulations at 30 CFR 701.5, includes a broader range of sediment control structures than the term "sedimentation ponds," we find that Missouri's revision will provide additional guidance for retention of phase I bond for unreclaimed temporary structures.

c. *10 CSR 40-7.021(3) Bond Release Application Procedures.* Missouri added the following new procedure at 10 CSR 40-7.021(3)(C):

(C) At the time of final or phase III bond release submittal, the operator shall include evidence that an affidavit has been recorded with the recorder of deeds in the county where the mined land is located generally describing the parcel or parcels of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of that land. This requirement shall be applicable to mined land where phase I reclamation was completed on or after September 1, 1992.

There is no counterpart Federal regulation. However, we find that this new requirement does not conflict with any existing Federal or State requirements concerning performance bond release. Therefore, 10 CSR 40-7.021(3)(C) will not make Missouri's rules concerning performance bond release at 10 CSR 40-7.021 less effective than the counterpart Federal regulations at 30 CFR 800.40.

F. *10 CSR 40-8 Definitions and General Requirements*

1. *10 CSR 40-8.010(1)(A)12 Definition of Best Technology Currently Available.* Missouri replaced the term "sedimentation ponds" with the term "siltation structures," in its definition of "best technology currently available."

Because the term "siltation structures" provides a broader classification of sediment control structures than the term "sedimentation ponds" and because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40-8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's revision will not make its definition of "best technology currently available" less effective than the counterpart Federal definition at 30 CFR 701.5.

2. *10 CSR 40-8.010(1)(A)87 and 40-8.010(1)(A)89 Definitions of*

*Sedimentation Pond and Siltation Structure, respectively.* Missouri removed its definition of "sedimentation pond" at 10 CSR 40-8.010(1)(A)87 and added its substantive provisions to the following new definition of "siltation structure" at 10 CSR 40-8.010(1)(A)89:

Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility, it also means a primary sediment control structure designed, constructed and maintained in accordance with 10 CSR 40-3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A siltation structure shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the siltation structure.

The counterpart Federal regulation at 30 CFR 701.5 defines "siltation structure" to mean a sedimentation pond, a series of sedimentation ponds, or other treatment facility. As shown above, Missouri's proposed definition of "siltation structure" at 10 CSR 40-8.010(1)(A)89 contains the language from the Federal definition and the previously approved language from its definition of "sedimentation pond" at 10 CSR 40-8.010(1)(A)87. As discussed throughout this document, Missouri replaced all instances of the term "sedimentation pond" with the term "siltation structure" in its rules at 10 CSR 40. Because Missouri no longer uses the term "sedimentation pond" in its rules and because Missouri added the substantive language from its currently approved definition of "sedimentation ponds" to its definition of "siltation structure," we find that Missouri's removal of its definition of "sedimentation pond" will not make its rules less effective than the Federal regulations. Also, because Missouri's definition of "siltation structure" at 10 CSR 40-8.010(1)(A)89 includes the language from the Federal definition of "siltation structure" at 30 CFR 701.5, we find that Missouri's definition is no less effective than the Federal definition.

3. *10 CSR 40-8.030(1) Inspections.* On September 29, 1992 (57 FR 44675), we required Missouri to revise 10 CSR 40-8.030(1)(F) and (G) to remove limitations regarding the required number of inspections of abandoned mine sites. We codified this requirement at 30 CFR 925.16(p)(18). In response to this requirement, Missouri proposed revisions to its regulations at 10 CSR 40-8.030(1)(F)4.A and 40-8.030(1)(G).

Missouri revised 10 CSR 40–8.030(1)(F)4.A by requiring a site to be classified as abandoned only in cases where a permit has either expired or been revoked. Missouri's revised rule is substantively identical to the counterpart Federal regulation at 30 CFR 840.11(g)(4)(i). Missouri revised 10 CSR 40–8.030(1)(G) by removing its existing provisions and adding new provisions that require Missouri to inspect abandoned sites on a frequency commensurate with the public health and safety and environmental conditions present. Missouri must always perform at least one complete inspection per calendar year for each abandoned site. Missouri's revised rule incorporates criteria that must be taken into consideration and documented before it can reduce inspection frequencies at an abandoned site. We find that Missouri's new provisions are substantively identical to the Federal regulation provisions at 30 CFR 840.11(h). We also find that Missouri's revisions at 10 CSR 40–8.030(1)(F)4.A and 40–8.030(1)(G) removed the previous limitations regarding the required number of inspections of abandoned mine sites and satisfied the required amendment at 30 CFR 925.16(p)(18). Therefore, we are approving 10 CSR 40–8.030(1)(F)4.A and 40–8.030(1)(G), and we are removing the required amendment at 30 CFR 925.16(p)(18).

4. *10 CSR 40–8.070(2)(C) Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.*

a. *10 CSR 40–8.070(2)(C)1.A Definition of Cumulative Measurement Period.* Missouri's current rule at 10 CSR 40–8.070(2)(C)1.A(II)(a) requires that, for coal or other minerals extracted prior to November 1, 1990, a person with an approved exemption for coal extraction incidental to the extraction of other minerals submit a written report of cumulative production and revenue every October after that. On September 29, 1992, we required Missouri to amend 10 CSR 40–8.070(2)(C)1.A(II) to provide appropriate dates for reporting of cumulative production that are no earlier than the date Missouri's October 10, 1990, amendment is published in the **Federal Register** as a final rule. We codified this requirement at 30 CFR 925.16(p)(20). In response to this requirement, Missouri amended 10 CSR 40–8.070(2)(C)1.A(II)(a) to require that, for coal or other minerals extracted prior to October 1, 1990, a person with an approved exemption for coal extraction incidental to the extraction of other minerals submit an annual written report of cumulative production and

revenue on September 30, 1992, and every September 30 after that.

Missouri's October 10, 1990, amendment was published in the **Federal Register** on September 29, 1992. Therefore, the initial annual reporting date proposed at 10 CSR 40–8.070(2)(C)1.A(II)(a) of September 30, 1992, and subsequent annual reporting date of September 30 satisfy a portion of the required amendment at 30 CFR 925.16(p)(20). However, Missouri's proposed rule still specifies the end of the period for which cumulative production and revenue is calculated is where the coal or other minerals were extracted prior to October 1, 1990, which is a date earlier than September 29, 1992. This date needs to be revised to be no earlier than September 29, 1992. Therefore, we find that Missouri's proposed rule at 10 CSR 40–8.070(2)(C)1.A(II) is less effective than the counterpart Federal regulation at 30 CFR 702.5(a)(2), and we are not approving the October 1, 1990, date proposed at 10 CSR 40–8.070(2)(C)1.A(II)(a). Also, Missouri did not revise its rule at 10 CSR 40–8.070(2)(C)1.A(II)(b). This rule still refers to extraction of coal or other minerals commenced on or after November 1, 1990, which is earlier than the required date. Based on this finding, we are modifying the required amendment at 30 CFR 925.16(p)(20).

b. *10 CSR 40–8.070(2)(C)10.F Revocation and Enforcement—Direct Enforcement.* Missouri's current rules at paragraph (2)(C)10.F provide direct enforcement requirements for operators who did or did not conduct activities in accordance with the terms of an approved exemption before revocation of the exemption. Subparagraph (C)10.F(I) specifies that an operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the commission which occurred prior to the revocation of the exemption. Subparagraph (C)10.F(II) specifies that an operator who does not conduct activities in accordance with the terms of an approved exemption shall be subject to direct enforcement action for violations of the commission. Subparagraph (C)10.F(III) specifies that upon revocation of an exemption or denial of an exemption application, an operator shall comply with the reclamation standards of the commission. On September 29, 1992, we required Missouri to amend its rules at 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III). We codified these requirements at 30 CFR 925.16(p)(21). The counterpart Federal regulations at 30 CFR 702.17(d)(1), (2), and (3) have similar requirements with

the exception that the Federal regulations either specify violations of the regulatory program or reclamation standards of the regulatory program. Missouri's current rules limit its direct enforcement requirements to violations or reclamation standards of its commission rather than its regulatory program. In response to the required amendment at 30 CFR 925.16(p)(21), Missouri replaced the term “commission” with the term “regulatory program” in each of its rules at 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III).

We find that Missouri's revised rules at 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III) are substantively identical to the counterpart Federal regulations at 30 CFR 702.17(d)(1), (2), and (3), respectively, and we are approving them. We also find that Missouri's revisions satisfy the required amendment at 30 CFR 925.16(p)(21), which we are removing.

G. *10 CSR 40–9.020 Abandoned Mine Reclamation and Restoration; Reclamation*

1. Missouri revised its rule at 10 CSR 40–9.020(1)(D)4 to require the commission to find in writing whether coal lands and waters damaged and abandoned after August 3, 1977, meet the specified eligibility requirements and priority objectives. Missouri also added the requirement that the commission find in writing that the reclamation priority of the site is the same or more urgent than the reclamation priority for other lands and waters. Missouri's revised rule reads as follows:

The commission finds in writing that the site meets the eligibility requirements of this section and the priority objectives stated in subsections (4)(A) and (B) of this rule and that the reclamation priority of the site is the same or more urgent than the reclamation priority for other lands and waters eligible pursuant to this section. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

The counterpart Federal regulation at 30 CFR 874.12(d) also requires a written determination of eligibility for these sites. Therefore, we find that Missouri's revised rule at 10 CSR 40–9.020(1)(D)4 is consistent with the requirements of the counterpart Federal regulation at 30 CFR 874.12(d)(3), and we are approving it.

2. Missouri added the following new provision at 10 CSR 40–9.020(1)(F):

If reclamation of a site covered by an interim or permanent program permit is carried out under the State reclamation program, the permittee of the site shall

reimburse the abandoned mine land reclamation fund for the cost of the reclamation that is in excess of any bond forfeited to ensure reclamation. In performing reclamation under subsection (1)(D) of this rule, the commission shall not be held liable for any violations of any performance standards or reclamation requirements specified in Chapter 444 RSMo (1994) nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Chapter 444 RSMo (1994).

We find that Missouri's rule at 10 CSR 40-9.020(1)(F) is substantively identical to the counterpart Federal regulation at 30 CFR 874.12(g), and we are approving it.

#### IV. Summary and Disposition of Comments

##### *Federal Agency Comments*

On October 18, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO-662.2). We did not receive any comments.

##### *Environmental Protection Agency (EPA)*

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment 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.*).

None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. MO-662.2). The EPA did not respond to our request.

##### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 18, 2000, we requested comments on Missouri's amendment (Administrative Record No. MO-662.2), but neither responded to our request.

##### *Public Comments*

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

#### V. Director's Decision

Based on the above findings, we approve, with certain exceptions and additional requirements, the amendment as sent to us by Missouri on October 5, 2000.

With the requirement that Missouri further revise its rules, we do not approve, as discussed in: finding No. C.3.f(2)(b), 10 CSR 40-3.040(10)(O)3.C and 40-3.200(10)(O)3.C, design precipitation event requirements for permanent and temporary impoundments; finding No. C.5.b, 10 CSR 40-3.240, air resource protection, to the extent that it is missing pertinent requirements relating to control of erosion and air pollution; finding No. F.4.a, 10 CSR 40-8.070(2)(C)1.A(II)(a), definition of cumulative measurement period, to the extent that it uses October 1, 1990, for determining the end of the period for which cumulative production and revenue is reported.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Missouri to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

##### *Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Missouri program, we will recognize only the statutes, rules and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Missouri of only such provisions.

#### VI. Procedural Determinations

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

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is

based on the analysis performed for the counterpart Federal regulations.

##### *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 under SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements of SMCRA.

##### *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, to the extent allowed by law, 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 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 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. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR part 884 of the Federal regulations.

##### *National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program

provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A). Agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are also categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *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 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. 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.

#### *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.

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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### **List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 2001.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

#### **PART 925—MISSOURI**

1. The authority citation for Part 925 continues to read as follows:

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

2. Section 925.12 is amended by removing the introductory paragraph; by revising paragraphs (a), (b), and (c) and adding paragraphs (d), (e), and (f) to read as follows:

#### **§ 925.12 State program provisions and amendments disapproved.**

(a) The amendment at 10 CSR 40–4.030(4)(A), submitted on December 14 and 18, 1987, is disapproved insofar as

it would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads associated with surface coal mining activities.

(b) The amendment at 10 CSR 40–4.030(4)(B), submitted on December 14 and 18, 1987, is disapproved insofar as it would exempt from prime farmland performance standards water bodies as a postmining land use.

(c) The definitions of “coal processing plant” and “coal preparation plant” at 10 CSR 40–8.010(1)(A)18, submitted on December 14 and 18, 1987, are disapproved insofar as they exempt from regulation certain facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, if they do not separate coal from its impurities.

(d) The amendments at 10 CSR 40–3.040(10)(O)3.C and 40–3.200(10)(O)3.C, submitted on October 5, 2000, concerning temporary impoundment design are disapproved effective May 9, 2001.

(e) The amendment at 10 CSR 40–3.240, submitted on October 5, 2000, concerning air resource protection is disapproved effective May 9, 2001, to the extent that it is missing pertinent requirements relating to control of erosion and air pollution.

(f) The amendment at 10 CSR 40–8.070(2)(C)1.A(II)(a), submitted on October 5, 2000, concerning the definition of cumulative measurement period is disapproved effective May 9, 2001, to the extent that it uses October 1, 1990, for determining the end of the period for which cumulative production and revenue is reported.

3. Section 925.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

#### **§ 925.15 Approval of Missouri regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
October 5, 2000	May 9, 2001	10 CSR 40-3.010(6); 3.020(3); 3.040(2)(A)1, 2, 3.B, 4, 5, 6; 3.040(4)(A)1 and (B)3; 3.040(6)(A), (B), (C), (E), (F), (G), (H), (Q), (T), (U); 3.040(8); 3.040(10)(A), (B)5, (L), (M), (N), (O), (O)1, (O)2.A and B, (O)2.C, (O)3, (O)3.A and B; 3.040(10)(O)3.C [not approved]; 3.040(13)(A)1.A and (B)1; 3.040(14)(B)3; 3.040(17); 3.050 Purpose; 3.050(1)(D)1.A; 3.050(2)(A); 3.050(3)(C)1; 3.080(1)(A); 3.080(3)(D); 3.080(8)(A); 3.090; 3.110(4)(A); 3.110(5)(A); 3.110(6)(B); 3.120(5); 3.120(8)(A)4, (B), (D)2 and 8; 3.140(1)(A); 3.200(2)(A)1, 2, 3.A, 4, 5, 6; 3.200(4)(B)3; 3.200(6)(A), (B), (C), (E), (F), (G), (Q), (T), (U); 3.200(8), 3.200(10)(A), (B)5, (K), (L), (M), (N), (O), (O)1, (O)2.A, B, and C, (O)3, (O)3.A and B; 3.200(10)(O)3.C [not approved]; 3.200(12) (A)1.A and (B)1; 3.200(13)(B)3; 3.200(16); 3.240 [partial approval]; 3.270(5); 3.270(8)(A)4 and (B); 4.010 Purpose; 4.010 (3)(J); 4.020(2)(B); 4.030 Purpose; 4.030 (3)(A); 4.030(4)(A), (B), (C); 4.030(6)(A), 4.030(7)(B)2 and 7; 4.050(11), (12); 5.010(1)(B); 5.010(2)(E); 6.010(4)(B)2; 6.010(6)(A); 6.020 Purpose; 6.020(5); 6.020(7)(A); 6.030(1)(C), (D), (I); 6.030(2)(C); 6.040(5)(B)1.E; 6.040(16)(C)1 and 3; 6.050(1); 6.050(5)(B)11, (C), and (C)1; 6.050(7)(D)1; 6.050(9)(C)3 and 4, (D)3, (E); 6.050(11)(A), (A)1.A, 2 and 3, (B), (C), (F); 6.050(17)(B); 6.060(4)(C)1 and 5, (D)1, (E)5; 6.070(3) and (3)(B); 6.070(4)(A); 6.070(5)(B)4; 6.070(8)(C), (D)3; 6.070(10) (D); 6.090(4)(B)2; 6.090(6)(A); 6.090(7); 6.100(1)(I); 6.100(2)(C); 6.120(5)(E); 6.120(7)(A), (A)2 and 3, (B)1, (C), (F); 6.120(12)(D)1; 6.120(14)(B)10, (C)1; 6.120(15)(B); 7.011(6)(A)8, (D)2.C(II), 5.A and C, 8; 7.021(1)(C) and (D); 7.021(2)(A), (B)5 and 6; 7.021(3)(C) and (D); 8.010(1) (A)9, 12, 52.C, 59, 73, 82, 87, 89, and 97B; 8.030(1)(F)4.A and (G); 8.030(6)(A)3 and (B)1; 8.030(10)(A); 8.030(12)(C); 8.050 Purpose; 8.050(1); 8.050(2)(B); 8.050(5)(A) and (B); 8.050(9)(A); 8.070(2)(C)1.A(II)(a) [partial approval] and 10.F, (F), (G).

4. Section 925.16 is amended by removing and reserving paragraphs (b), (f)(1), (g), (p)(5), (p)(9), (p)(10), (p)(11), (p)(12), (p)(14), (p)(16), (p)(18), (p)(21), (q), (q)(2), and (u); by revising paragraphs (p), (p)(4), and (p)(20) and adding paragraph (v) to read as follows:

**§ 925.16 Required program amendments.**

(p) By May 10, 2002, Missouri shall amend its program as follows:

(4) At 10 CSR 40-3.240 by providing performance standards that address air

quality in a manner no less effective than the Federal regulations at 30 CFR 817.95(a).

(20) At 10 CSR 40-8.070(2)(C)1.A(II)(a) and (b) to revise the definition of cumulative measurement period to provide appropriate dates for the end of the period for which cumulative production and revenue is reported that are no earlier than September 29, 1992, in accordance with the Federal regulation requirements at 30 CFR 702.5(a)(2)(i) and (ii).

(v) By May 10, 2002, Missouri must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove its provisions at 10 CSR 40-3.040(10)(O)3.C and 40-3.200(10)(O)3.C.

5. Section 925.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.**

Original amendment submission date	Date of final publication	Citation/description
October 5, 2000	May 9, 2001	10 CSR 40-9.020(1)(D)4 and (F).

[FR Doc. 01-11635 Filed 5-8-01; 8:45 am]  
BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 936**

[SPATS No. OK-025-FOR]

**Oklahoma Regulatory Program**

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions to its rules concerning permit revisions. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** May 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining,

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**I. Background on the Oklahoma Program**

On January 19, 1981, the Secretary of the Interior conditionally approved the