

1.32 do not impose an information collection burden on the public.

List of Subjects in 17 CFR Part 1

Brokers, Commodity Futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4d, 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.32 is proposed to be revised to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day:

(1) The total amount of customer funds on deposit in segregated accounts on behalf of commodity and option customers;

(2) The amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such commodity and option customers; and

(3) The amount of the futures commission merchant's residual interest in such customer funds.

(b) In computing the amount of funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular customer's account against the current market value of readily marketable securities, less applicable percentage deductions (*i.e.*, "securities haircuts") as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3-1(c)(2)(vi)), held for the same customer's account. The futures commission merchant must maintain a security interest in the securities, including the written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a "ready market" as defined

in Rule 15c3-1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3-1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

Issued in Washington D.C. on October 25, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00-27914 Filed 10-30-00; 8:45 am]

BILLING CODE 6351-01-P

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: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed 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 proposes revisions to its rules pertaining to surface mining performance requirements, 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.

This document gives the times and locations that the Missouri program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the

procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., November 30, 2000. If requested, we will hold a public hearing on the amendment on November 27, 2000. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on November 15, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Missouri program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751-4041.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463-6460. Internet: jcoleman@mcrwgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program and the Missouri 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. Description of the Proposed 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 at 30 CFR 925.16. The amendment also includes changes made at Missouri's own initiative. Missouri proposes to amend the Missouri Code of State Regulations (CSR) at Title 10, Division 40. Below is a summary of the changes proposed by Missouri. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. 10 CSR 40-3 Permanent Performance Requirements for Surface Coal Mining and Related Activities

1. *10 CSR 40-3.010(6) Buffer Zone Markers.* Missouri proposes to add a reference to 10 CSR 40-8.010(1)(A)13 in its provision at 10 CSR 40-3.010(6). Missouri's rule at 10 CSR 40-8.010(1)(A)13 defines the term "buffer zone."

2. *10 CSR 40-3.020 Requirements for Casing and Sealing of Drilled Holes.* Missouri proposes to remove its reference to 10 CSR 40-3.040(13) and to add a reference to 10 CSR 40-3.040(14) and the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 6, in its provisions at 10 CSR 40-3.020(1) and (3). Provisions of the referenced rules must be met in order to use a drilled hole or borehole or monitoring well as a water well.

3. *10 CSR 40-3.040 and 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance.* Missouri proposes 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 is changing all instances of the term "sedimentation ponds" to the term "siltation structures" in its rules at 10 CSR 40-3.040(2), 10 CSR 40-3.040(6), 10 CSR 40-3.040(8), 10 CSR 40-3.040(17), 10 CSR 40-3.200(2), 10 CSR 40-3.200(6), 10 CSR 40-3.200(8), and 10 CSR 40-3.200(16).

b. At 10 CSR 40-3.040(4)(A), Missouri is correcting a rule reference by changing "subsection (17)(A)" to "subsection (18)(A)."

c. At 10 CSR 40-3.040(4)(B)3 and 10 CSR 40-3.200(4)(B)3, Missouri is adding

the language "and any design criteria set by the director" at the end of the paragraph.

d. At 10 CSR 40-3.040(6)(T) and 10 CSR 40-3.200(6)(T), Missouri is adding the following new provision:

Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service (now renamed as the Natural Resources Conservation Service) Technical Release No. 60 (210-VI, TR-60, Revised Oct. 1985), entitled "Earth Dams and Reservoirs," hereafter in these rules referred to as TR-60, or the size or criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.

Missouri is also revising the existing provision by requiring that impoundments which do not meet the above criteria be examined at least quarterly.

e. At 10 CSR 40-3.040(10)(A) and 10 CSR 40-3.200(10)(A), Missouri is adding the following new sentence:

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.

f. At 10 CSR 40-3.040(10)(B)5 and 10 CSR 40-3.200(10)(B)5, Missouri proposes to remove its current reference to the "United States Soil Conservation Service Practice Standards 378, Ponds, January 1991" and replace it with a reference to the "United States Natural Resources Conservation Service, Conservation Practice Standard, Pond, No. Code 378, December 1998."

g. Missouri is adding a new subsection at 10 CSR 40-3.040(10)(L) and 10 CSR 40-3.200(10)(L) entitled "Stability." Paragraphs (10)(L)1 require an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), to have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2. Paragraphs (10)(L)2 require an impoundment not included in the first paragraph, 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, December 1998, and be less than 20 feet in height.

h. Missouri is adding a new subsection at 10 CSR 40-3.040(10)(M) and 10 CSR 40-3.200(10)(M) entitled "Freeboard." Subsections (10)(M) require an impoundment to have adequate freeboard to resist overtopping by waves and by sudden increases in

storage volume. They also require an impoundment that meets the Class B or C criteria for dams in TR-60 to comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

i. Missouri is adding a new subsection at 10 CSR 40-3.040(10)(N) and 10 CSR 40-3.200(10)(N) entitled "Foundation." Paragraphs (10)(N)1 require foundations and abutments for an impounding structure to be stable during all phases of construction and operation and the design must be based on adequate and accurate information on the foundation conditions. For impoundments meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), they require that foundation investigation, as well as any necessary laboratory testing of foundation material, be performed to determine the design requirements for foundation stability. Paragraphs (10)(N)2 require that all vegetative and organic materials be removed and foundations excavated and prepared to resist failure. Cutoff trenches must be installed if necessary to ensure stability.

j. Missouri is adding a new subsection at 10 CSR 40-3.040(10)(O) and 10 CSR 40-3.200(10)(O) entitled "Spillways." Subsections (10)(O) provide the spillway requirements for permanent and temporary impoundments meeting the Class B or C criteria for dams in TR-60, for impoundments meeting or exceeding the size or other criteria of 30 CFR 77.216(a), and for impoundments not meeting either criteria. They also specify the design precipitation events that the various types of impoundments must be designed and constructed to safely pass or contain.

k. At 10 CSR 40-3.040(13)(A)1.A, Missouri is correcting regulation references by changing "10 CSR 40-6.070(13)" to "10 CSR 40-6.070(14)" and removing a reference to "10 CSR 40-6.120(5)." At 10 CSR 40-3.040(13)(B)1, Missouri is correcting a regulation reference by changing "10 CSR 40-6.050(9)(B)4" to "10 CSR 40-6.050(9)(C)4."

l. Missouri is revising 10 CSR 40-3.040(14)(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 those provisions of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3, applicable to the well.

m. At 10 CSR 40-3.200(12)(A)1.A, Missouri is correcting a regulation reference by changing "10 CSR 40-6.070(13)" to "10 CSR 40-6.070(14)." At 10 CSR 40-3.200(12)(B)1, Missouri is correcting a regulation reference by

changing "10 CSR 40-6.120(5)(B)3" to "10 CSR 40-6.120(5)(C)3."

n. Missouri is revising 10 CSR 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 40-3.180 and those provisions of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3, applicable to the well.

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 require an operator to 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 require the operator to 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. At 10 CSR 40-3.050(3)(C)1, Missouri removed the language "at a minimum, shall contain."

5. *10 CSR 40-3.080 Requirements for the Disposal of Coal Processing Waste.* Missouri proposes the following changes to its requirements for disposing of coal processing waste.

a. Missouri proposes to revise the first sentence of 10 CSR 40-3.080(1)(A) to read as follows:

All coal processing waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed for final placement in new or existing disposal areas approved in the permit and plan for this purpose.

b. At 10 CSR 40-3.080(3)(D), Missouri proposes to remove the references to "10 CSR 40-3.040(12) and (15)" and add a reference to "10 CSR 40-3.040(16)."

6. *10 CSR 40-3.090 Requirements for the Protection of Air Resources at Surface Mining Operations.* Missouri proposes to add the following new requirement:

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).

7. *10 CSR 40-3.110 Backfilling and Grading Requirements.* Missouri proposes the following changes to its backfilling and grading requirements.

a. *10 CSR 40-3.110(4) Thin Overburden.* Missouri proposes to remove the first three sentences of 10 CSR 40-3.110(4)(A) and add the following language in their place:

The provisions of this section apply only where there is insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to

its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

b. *10 CSR 40-3.110(5) Thick Overburden.* Missouri proposes to remove the first three sentences of 10 CSR 40-3.110(5)(A) and add the following language in their place:

The provisions of this section apply only where there is more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) Closely resemble the surface configuration of the land prior to mining; or (2) Blend into and complement the drainage pattern of the surrounding terrain.

c. *10 CSR 40-3.110(6) Regrading or Stabilizing Rills and Gullies.* Missouri proposes to revise 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.

8. *10 CSR 40-3.120 and 10 CSR 40-3.270 Revegetation Requirements.* Missouri proposes the following 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. Missouri proposes to remove the term "range land" from its provisions for grazing at 10 CSR 40-3.120(5) and 10 CSR 40-3.270(5).

b. Missouri proposes to replace the term "sediment ponds" with the term "siltation structures" in its rules at 10 CSR 40-3.120(8)(A)4 and (B) and 10 CSR 40-3.270(8)(A)4 and (B).

9. *10 CSR 40-3.140 Road and Other Transportation Requirements.* At 10 CSR 40-3.140(1)(A), Missouri proposes to remove the word "road" from the phrase "as well as dust occurring on other exposed road surfaces."

10. *10 CSR 40-3.240 Air Resource Protection at Underground Mining Operations.* Missouri proposes to remove the existing requirement and add the following new requirement:

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

B. 10 CSR 40-4 Permanent Performance Requirements for Special Mining Activities

1. *10 CSR 40-4.010 Coal Exploration Requirements.* Missouri is proposing two changes to its rules concerning coal exploration requirements.

a. Missouri is revising its purpose statement to read as follows:

This rule sets forth the requirements for conducting coal exploration activities pursuant to 444.810 and 444.845, RSMo.

b. Missouri is correcting a citation reference at 10 CSR 40-4.010(3)(J) by changing the reference from "10 CSR 40-3.040(8)" to "10 CSR 40-3.040(9)."

2. *10 CSR 40-4.020 Auger Mining Requirements.* Missouri is correcting a citation reference at 10 CSR 40-4.020(2)(B) by changing the reference from "10 CSR 40-6.060(6)" to "10 CSR 40-6.060(5)."

3. *10 CSR 40-4.030 Operations on Prime Farmland.*

a. Missouri proposes to revise its purpose statement to read as follows:

This rule outlines the procedure for surface coal mining and reclamation on prime farmland pursuant to 444.810 and 444.855 RSMo.

b. Missouri proposes to change the term "United States Soil Conservation Service" to the term "United States Natural Resources Conservation Service" at 10 CSR 40-4.030(3)(A), (6)(A), and (7)(B)2 and 7.

c. Missouri proposes to remove its current provision at 10 CSR 40-4.030(4)(A), redesignate 10 CSR 40-4.030(4)(B) as 10 CSR 40-4.030(4)(C), and add the following new provisions at 10 CSR 40-4.030(4)(A) and (B):

(A) Coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of 10 CSR 40-3.

(B) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

4. *10 CSR 40-4.050 Coal Processing Plants and Support Facilities Not Located at or Near the Mine Site or Not Within the Permit Area for a Mine.* Missouri proposes to correct the citation reference at 10 CSR 40-4.050(11) from "10 CSR 40-3.100(1)-(4)" to "10 CSR 40-3.100(1)-(7)." Missouri also proposes to correct the citation

reference at 10 CSR 40–4.050(12) from “10 CSR 40–3.100(5)” to “10 CSR 40–3.100(8).”

C. 10 CSR 40–5 Prohibitions and Limitations on Mining in Certain Areas and Areas Unsuitable for Mining

1. At 10 CSR 40–5.010(1)(B), Missouri proposes to revise the first sentence of its definition of “No significant recreational, timber, economic or other values incompatible with surface coal mining operations” to read as follows:

Significant recreational, timber, economic or other values incompatible with surface coal mining operations means those values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected area.

2. Missouri proposes to revise the first sentence of 10 CSR 40–5.010(2)(E) to read as follows:

Within three hundred feet (300’), measured horizontally, from any occupied dwelling unless the permit applicant submits with the application a written waiver from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right.

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

1. **10 CSR 40–6.010 General Requirements for Permits.** Missouri is proposing the following changes to its rule at 10 CSR 40–6.010.

a. **10 CSR 40–6.010(4)(B)2 Renewal of Valid Permits.** Missouri proposes to correct a citation reference by changing “10 CSR 40–6.080(5) and (6)” to “10 CSR 40–6.090(5) and (6).” Missouri also proposes to add 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.

b. **10 CSR 40–6.010(6)(A) Permit Fees.** Missouri proposes to remove the existing third sentence. Missouri also proposes to revise 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.

2. **10 CSR 40–6.020 General Requirements for Coal Exploration Permits.** Missouri is proposing several changes to its rule at 10 CSR 40–6.020.

a. Missouri is proposing to revise the purpose statement to read as follows:

This rule sets forth the requirements for coal exploration permits pursuant to 444.810 and 444.845, RSMo.

b. **10 CSR 40–6.020(5) Requirements for Commercial Use or Sale During Coal Exploration.** In the first sentence, Missouri is proposing to add the words “use or” before the word “sale” in the phrase “for commercial sale.” In the first sentence, Missouri is also proposing to change the citation references to “10 CSR 40–6.010 and 10 CSR 40–6.030 through 10 CSR 40–6.120.” In the second sentence, Missouri is proposing to add the word “written” before the word “determination.” Missouri is also adding a new sentence that reads as follows:

The person conducting the exploration shall file an application for such determination with the director or commission.

c. **10 CSR 40–6.020(7) Bonding for Coal Exploration Permits.** At 10 CSR 40–6.020(7)(A), Missouri proposes to change the citation reference to “10 CSR 40–7.011(6).”

3. **10 CSR 40–6.030 and 10 CSR 40–6.100 Minimum Requirements for Legal, Financial, Compliance and Related Information.** Missouri proposes the following changes to its rules at 10 CSR 40–6.030 for surface mining operations and 10 CSR 40–6.100 for underground mining operations.

a. In the introductory paragraph of 10 CSR 40–6.030(1)(C), Missouri proposes to add the phrase “each application shall contain” after the words “as applicable.”

b. Missouri proposes to revise 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—

c. At 10 CSR 40–6.030(1)(I) and 10 CSR 40–6.100(1)(I), Missouri proposes to require the applicant to submit the information required by 10 CSR 40–6.010(1) and (2) and 10 CSR 40–6.100(1) and (2) in any format prescribed by the “Office of Surface Mining Reclamation and Enforcement (OSMRE).”

d. Missouri is revising 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.

e. Missouri is revising 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:

A. 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;

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.

4. 10 CSR 40–6.040 *Environmental Resources.*

a. 10 CSR 40–6.040(5) *Geology Description.* Missouri is revising 10 CSR 40–6.040(5)(B)1.E to read as follows:

Analyses of the coal seam for acid- or toxic-forming materials, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.

b. 10 CSR 40–6.040(16) *Prime Farmland Investigation.* Missouri is revising 10 CSR 40–6.040(16)(C)1 and 3 by changing its references to the “United States Soil Conservation Service” to the “United States Natural Resources Conservation Service.”

5. 10 CSR 40–6.050 and 10 CSR 40–6.120 *Minimum Requirements for Reclamation and Operations Plan.* Missouri proposes the following 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 proposes to change the term “sedimentation pond” to the term “siltation structure” in its rules at 10 CSR 40–6.050(5)(B)11, 10 CSR 40–6.050(5)(C)1, 10 CSR 40–6.050(11)(A) and (B), 10 CSR 40–6.120(7)(A) and (B), and 10 CSR 40–6.120(14)(B)10 and (C)1).

b. At 10 CSR 40–6.050(7)(D)1, Missouri proposes that each fish and wildlife plan description be consistent with the requirements of this section and 10 CSR 40–3.100.

c. At 10 CSR 40–6.050(9)(C)3, Missouri is changing a citation reference from “10 CSR 40–3.040(11)” to “10 CSR 40–3.040(12).”

d. At 10 CSR 40–6.050(9)(C)4, Missouri is changing a citation reference from “10 CSR 40–3.040(12)” to “10 CSR 40–3.040(13).”

e. Missouri is redesignating the introductory paragraph of “10 CSR 40–6.050(9)(E)” as “10 CSR 40–6.050(9)(D)3” and adding a new heading entitled “Cumulative Hydrologic Impact Assessment” at 10 CSR 40–6.050(9)(E) and 10 CSR 40–6.120(5)(E).

f. At 10 CSR 40–6.050(11)(A) and 10 CSR 40–6.120(7)(A), Missouri is proposing to add the words “and a detailed plan” after the words “general plan.”

g. At 10 CSR 40–6.050(11)(A)2 and 10 CSR 40–6.120(7)(A)2, Missouri is adding the following sentence to the

beginning of the introductory paragraphs:

Impoundments meeting the Class B or C criteria for dams in TR–60, which is incorporated by reference, shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA).

h. At 10 CSR 40–6.050(11)(A)3 and 10 CSR 40–6.120(7)(A)3, Missouri is removing a citation reference to “30 CFR 77.216(a)” and adding a citation reference to “10 CSR 40–6.050(11)(A)2 and 10 CSR 40–6.120(7)(A)2,” respectively.

i. Missouri is proposing to revise the second sentence of 10 CSR 40–6.050(11)(C) and 10 CSR 40–6.120(7)(C) to require that each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration comply with the requirements of 30 CFR 77.216–1 and 30 CFR 77.216–2. Missouri is adding a new sentence to these sections to require that the plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 be submitted to the director as part of the permit application.

j. Missouri is proposing to revise the first sentence of 10 CSR 40–6.050(11)(F) and 10 CSR 40–6.120(7)(F) by requiring that if a structure meets the Class B or C criteria for dams in TR–60, or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsections (11)(B), (C) and (E) and subsections (7)(B), (C) and (E), respectively, must include a stability analysis of each structure.

k. Missouri is proposing to remove the language “or a qualified registered professional land surveyor” from its provisions at 10 CSR 40–6.050(17)(B) and 10 CSR 40–6.120(15)(B).

l. At 10 CSR 40–6.120(12)(D), Missouri proposes that each fish and wildlife plan description be consistent with the requirements of this section and 10 CSR 40–3.250.

6. 10 CSR 40–6.060(4) *Prime Farmlands.*

a. Missouri is proposing to change all instances of its references to the “United States Soil Conservation Service” and the “SCS” to the “United States Natural Resources Conservation Service” and the “NRCS,” respectively.

b. At 10 CSR 40–6.060(4)(E)5, Missouri is proposing to add the following new provision:

Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property

owners within the permit area must be obtained.

7. 10 CSR 40–6.070 *Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions.*

a. At 10 CSR 40–6.070(3)(B), Missouri is proposing to require that written comments on permit applications be submitted to the commission and director within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A).

b. 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).

c. At 10 CSR 40–6.070(8)(C), Missouri is correcting a citation reference by changing “10 CSR 40–6.050(9)(C)” to “10 CSR 40–6.050(9)(E).”

d. At 10 CSR 40–6.070(10)(D), Missouri is changing the word “formal” to the word “informal.”

8. 10 CSR 40–6.090 *Permit Reviews, Revisions and Renewals.*

a. Missouri is revising 10 CSR 40–6.090(4)(B)2, to require that the scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests must be sufficient to demonstrate compliance with all applicable rules.

b. At 10 CSR 40–6.090(6)(A), Missouri is correcting a citation reference by changing “10 CSR 40–6.010(4)(B)3” to 10 CSR 40–6.010(4)(B)2.”

c. At 10 CSR 40–6.090(7), Missouri is correcting a citation reference by changing “10 CSR 40–6.070(11)” to “10 CSR 40–6.070(12).”

E. 10 CSR 40–7 *Bond and Insurance Requirements*

1. 10 CSR 40–7.011 *Bond Requirements.*

a. At 10 CSR 40–7.011(6)(A)8 and (D)8, Missouri is proposing to require that if a cessation order is issued, mining operations shall not resume until the director has determined that an acceptable bond has been posted.

b. At the end of 10 CSR 40–7.011(6)(D)2.C.(II), Missouri is changing the word “and” to the word “or.”

c. Missouri is proposing to revise 10 CSR 40–7.011(6)(D)5.A by changing the phrase “including the parent corporate guarantor, a third-party nonparent corporate guarantor, or both” to the phrase “including the parent and nonparent corporations.”

d. Missouri is proposing to revise 10 CSR 40–7.011(6)(D)5.C by changing the

language "parent or nonparent corporate guarantor" to the language "parent and nonparent corporation."

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

a. Missouri is proposing to remove its provisions at 10 CSR 40-7.021(2)(B)5 and 6 and add them at 10 CSR 40-7.021(1)(C) and (D).

b. Missouri is proposing to replace the term "sediment ponds" with the term "siltation structures" in 10 CSR 40-7.021(2)(A).

c. Missouri is proposing to add the following new provisions at 10 CSR 40-7.021(3)(C) and (D):

(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.

(D) Notarized Statement of Accomplished Reclamation. The permittee shall include in the application for reclamation liability release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Surface Coal Mining Law, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application and each phase of bond release.

F. 10 CSR 40-8 Definitions and General Requirements

1. 10 CSR 40-8.010 Definitions.

a. At 10 CSR 40-8.010(1)(A)9, Missouri is correcting its definition of "approximate original contour" by adding the language "piles eliminated" after the word "refuse" to end the first sentence and adding the language "Permanent water impoundments" before the words "may be permitted" to begin a second sentence. Missouri is also replacing its reference to "10 CSR 40-3.049(9) and (16)" with a reference to "10 CSR 40-3.040(10) and (17)."

b. At 10 CSR 40-8.010(1)(A)12, Missouri is revising its definition of "best technology currently available" by replacing the term "sedimentation ponds" with the term "siltation structures."

c. At 10 CSR 40-8.010(1)(A)52.C, Missouri is revising its definition of "land use" by adding the information "(now known as the Natural Resources Conservation Service)" after the term "Soil Conservation Service" in its secondary definition of "prime farmland."

d. At 10 CSR 40-8.010(1)(A)59, Missouri is revising its definition of "other treatment facilities" as follows:

Other treatment facilities means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized—

A. To prevent additional contributions of dissolved or suspended solids to stream flow or runoff outside the permit area; or

B. To comply with all applicable State and Federal water-quality laws and regulations.

e. At 10 CSR 40-8.010(1)(A)73, Missouri is revising in definition of "prime farmland" as follows:

Prime farmland means land which meets the technical criteria established by the Secretary of Agriculture in 7 CFR 657 (FR Vol. 4, No. 21) and which has historically been used for cropland as that phrase is defined above.

f. At 10 CSR 40-8.010(1)(A)82, Missouri is adding the following definition of "regulatory authority":

Regulatory authority means the Land Reclamation Commission, the director, or their designated representative and employees unless otherwise specified in these rules.

g. Missouri is proposing to remove its definition for "sedimentation pond" at 10 CSR 40-8.010(1)(A)(87) and to add the following definition for "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.

h. At 10 CSR 40-8.010(1)(A)97.B, Missouri is correcting a citation reference in its definition of "surface coal mining operations" by replacing a reference to "subparagraph (1)(A)14" with a reference to "subparagraph (1)(A)98.A."

2. 10 CSR 40-8.030 Permanent Program Inspection and Enforcement.

a. Missouri is proposing to revise 10 CSR 40-8.030(1)(F)4.A by allowing a site to be classified as abandoned only in cases where a permit has either expired or been revoked.

b. Missouri is revising 10 CSR 40-8.030(1)(G) to read as follows:

In lieu of the inspection frequency established in subsections (1)(A) and (B) of this rule, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

1. In selecting an alternate inspection frequency authorized under the subsection above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (G)2 of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

A. How the site meets each of the criteria under the definition of an abandoned site under subsection (F) of this section and thereby qualifies for a reduction in inspection frequency;

B. Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that currently pose, or may reasonably be expected to pose, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

C. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

D. The degree to which erosion and sediment control is present and functioning;

E. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

F. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

G. Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

2. Provide the public notice and opportunity to comment required under subparagraph (G)1 of this section as follows:

A. The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

B. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and the address of the regulatory authority where written comments

on the reduced inspection frequency may be submitted, and the closing date of the comment period.

c. At 10 CSR 40–8.030(6)(A)3, Missouri replaced a reference to “paragraph (7)(A)1 of this section” with a reference to “paragraph (6)(A)1 of this rule.”

d. At 10 CSR 40–8.030(12)(C), Missouri replaced a reference to “subsection (8)(E)” with a reference to “10 CSR 40–7.031.”

3. 10 CSR 40–8.050 *Small Operators’ Assistance Program (SOAP)*.

a. Missouri proposes to revise its definition of “qualified laboratory” at 10 CSR 40–8.050(1) by replacing the phrase “which can prepare” with the phrase “that can provide” and by adding the phrase “or other services as specified in section (5) of this rule” after the term “core samplings.”

b. Missouri proposes to revise the first sentence of 10 CSR 40–8.050(2)(B) to read as follows:

Establishes that his/her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed three hundred thousand (300,000) tons.

c. At 10 CSR 40–8.050(2)(B)1 and 2, Missouri proposes to increase from 5 to 10 percent the baseline percentage above which ownership will play a role in determining “attributed coal production.”

d. At 10 CSR 40–8.050(5)(A), Missouri proposes to add the phrase “and provide other services” after the word “statement.”

e. At 10 CSR 40–8.050(5)(B)1, Missouri proposes to add the phrase “including the engineering analysis and designs necessary for the determination” after the term “adjacent areas.”

f. Missouri is revising 10 CSR 40–8.050(5)(B)2 to specify that drilling to provide rock samples is an authorized service under its SOAP rules.

g. Missouri is proposing to add the following new authorized services under its SOAP rules at 10 CSR 40–8.050(5)(B)3, 4, 5, and 6:

3. The development of cross-section maps and plans required by 10 CSR 40–6.040(15);

4. The collection of archaeological and historic information and related plans required by 10 CSR 40–6.040(3)(B) and 10 CSR 40–6.050(14) and any other archaeological and historic information required by the regulatory authority;

5. Pre-blast surveys required by 10 CSR 40–6.050(4); and

6. The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 10 CSR 40–6.050(7) and

information and plans for any other environmental values required by the regulatory authority under the act.

h. Missouri is revising the introductory paragraph to 10 CSR 40–8.050(9)(A) to read as follows:

A coal operator who has received assistance pursuant to section (5) of this rule, shall reimburse the director or commission for the cost of the services rendered if—

i. Missouri is proposing to revise 10 CSR 40–8.050(9)(A)2 to read as follows:

The director or commission finds that the operator’s actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

j. Missouri is proposing to revise the first sentence of 10 CSR 40–8.050(9)(A)3 to read as follows:

The permit is sold, transferred or assigned to another person and the transferee’s total actual and attributed production exceeds the three hundred thousand (300,000)-ton annual production limit during the twelve (12) months immediately following the date on which the permit was originally issued.

4. 10 CSR 40–8.070 *Applicability and General Performance Requirements*

a. At 10 CSR 40–8.070(2)(C)1.A.(II), Missouri is replacing a reference to “paragraph (2)(C)10” with a reference to “paragraph (2)(C)11.”

b. At 10 CSR 40–8.070(2)(C)1.A.(II)(a), Missouri is proposing to change the end of the period for which cumulative production and revenue is calculated for coal or other minerals from “extracted prior to November 1, 1992, and every October after that” to “extracted prior to October 1, 1992, September 30, 1992 and every September 30 after that.”

c. At 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III), Missouri replaced the term “commission” with the term “regulatory program.”

d. Missouri proposed the following new provisions at 10 CSR 40–8.070(2)(F) and (G):

(F) The commission may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or portion thereof, when:

1. The commission or director determines in writing that under the initial program, all requirements imposed under 10 CSR 40–2, 10 CSR 40–3, 10 CSR 40–4 and 10 CSR 40–8 have been successfully completed; or

2. The commission or director determines in writing that all requirements imposed under 10 CSR 40 chapters 3 through 8 have been successfully completed, and,

3. The operator has properly applied for, and obtained release of Phase III reclamation liability in accordance with 10 CSR 40–7.021(3) through (5).

(G) Following a termination of jurisdiction under subsection (F) of this rule, the commission shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the determination made under subsection (F) of this rule, or the release of Phase III reclamation liability referred to under paragraph (F) of this rule was based upon fraud, collusion, or misrepresentation of a material fact.

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

1. Missouri proposes to revise the first sentence of 10 CSR 40–9.020(1)(D)4 to read 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.

2. Missouri proposes to add 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).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h) and 884.15(a), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15 and 884.14. If we approve the amendment, it will become part of the Missouri program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn:

SPATS NO. MO-033-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463-6460.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Mid-Continent Regional Coordinating Center (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on November 15, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting

by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting a part of the Administrative Record.

IV. 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 such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 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: October 24, 2000.

Malcolm Ahrens,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00-27919 Filed 10-30-00; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX-119-2-7472; FRL-6893-5]

Approval and Promulgation of Implementation Plans; Texas; Electric Generating Facilities; Cement Kilns; and Major Stationary Sources of Nitrogen Oxides for the Dallas/Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of rules into the Texas State Implementation Plan (SIP). This rulemaking covers three separate actions.

First, we are proposing to approve revisions to the Texas Nitrogen Oxides

(NO_x) rules for electric generating facilities in East and Central Texas. These new limits for electric generating facilities in East and Central Texas will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the Houston/Galveston (H/GA), Dallas/Fort Worth (D/FW), and Beaumont/Port Arthur (B/PA) 1-hour ozone nonattainment areas. They will also contribute to continued maintenance of the standard in the eastern half of Texas and will strengthen the existing Texas SIP.

Second, we are proposing to approve revisions to the Texas NO_x rules for cement kilns in East and Central Texas. These rule revisions will contribute to attainment of the 1-hour ozone standard in the D/FW area, will contribute to continued maintenance of the standard in the eastern half of the State of Texas, and will strengthen the existing Texas SIP.

Third, we are proposing to approve revisions to the Texas NO_x rules for major stationary sources in the D/FW 1-hour ozone nonattainment area. These new limits for stationary sources will contribute to attainment of the 1-hour ozone standard in the D/FW nonattainment area.

The EPA is proposing approval of these SIP revisions to regulate emissions of NO_x as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before November 30, 2000.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the above and following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214)665-6691.

SUPPLEMENTARY INFORMATION:

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- Throughout this document "we," "us," and "our" means EPA.

1. What Are We Proposing To Approve?

On April 30, 2000, the Governor of Texas submitted rule revisions to the 30 TAC, Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a revision to the SIP for electric generating facilities in East and Central Texas. Texas submitted this revision to us as a part of the attainment plans for the D/FW, B/PA, and H/GA 1-hour ozone nonattainment areas. The revision also contributes to continued maintenance of the standard in the eastern half of the State of Texas, and it is a strengthening of the existing Texas SIP.

On April 30, 2000, the Governor of Texas submitted rule revisions to the 30 TAC, Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a revision to the SIP for cement kilns in East and Central Texas. Texas submitted this revision to us as a part of the NO_x reductions needed for the continued maintenance of the 1-hour ozone standard in the eastern half of the State and for the D/FW area to attain the 1-hour ozone standard, and as a strengthening of the existing Texas SIP.

On April 30, 2000, the Governor of Texas submitted rule revisions to the 30 TAC, Chapter 117, "Control of Air Pollution From Nitrogen Compounds," as a revision to the SIP for major stationary sources operating in the D/FW 1-hour ozone nonattainment area. Texas submitted this revision to us as a part of the NO_x reductions needed for the D/FW area to attain the 1-hour ozone standard.

We are proposing three separate actions:

(1) We are specifically proposing to approve new sections 117.131