EFFECTIVE DATE: July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On June 29, 1995, OSHA issued a corrections document, correcting and clarifying certain provisions of the final asbestos standards in general industry, construction and shipyard employment that were issued on August 10, 1994. Several typographical errors were discovered and one correction was inadvertently omitted from this document.

The standard and this correction document are issued under the authority of sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR part 1911.

Correction of Publication

The following corrections are made to the final rule for Occupational Exposure to Asbestos published in the **Federal Register** on August 10, 1994 (59 FR 40964) and corrected in the **Federal Register** on June 29, 1995 (59 FR 33974).

PART 1915—[CORRECTED]

1. On page 41080, in § 1915.1001, paragraph (b), in the definition of ''Class III asbestos work,'' line 2 from the top of the third column, the words ''may be'' are corrected to read ''is likely to be''.

2. The definition of ''Disturbance'' in paragraph (b) of § 1915.1001, on page 41080, in the third column, in the **Federal Register** document of August 10, 1994 and corrected in the **Federal Register** document of June 29, 1995 on page 33988 is further corrected by removing the first two sentences and adding a new sentence in its place to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(b) * * *

Disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM. * * *

* * * * *

PART 1926—[CORRECTED]

3. The definition of ''Class III asbestos work'' in paragraph (b) of § 1926.1101, on page 41132, in the second column, in the **Federal Register** document of August 10, 1994 and corrected in the **Federal Register** document of June 29, 1995 on page 33995 is further corrected. The words ''may be'' are corrected to read ''is likely to be''.

4. The definition of ''Disturbance'' in paragraph (b) of § 1926.1101, on page 41132, in the third column, in the **Federal Register** document of August 10, 1994 and corrected in the **Federal Register** document of June 29, 1995 on page 33996 is further corrected by removing the first two sentences and adding a new sentence in its place to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(b) * * *

Disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM. * * *

* * * * *

Signed at Washington, DC this 10th day of July, 1995.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 95–17194 Filed 7–12–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the ''Missouri program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposed revisions to rules pertaining to definitions, topsoil redistribution, impoundment design, disposal of coal processing and noncoal waste, backfilling and grading, coal exploration, fish and wildlife plan, permit approval findings, notice of violations, and eligibility for small operators assistance. The amendment is intended to revise the State program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: July 13, 1995.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated February 10, 1995 (administrative record No. MO–612), Missouri submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Missouri submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 925.16(b)(4), (p)(9), and (q)(1) through (q)(5), and at its own initiative to improve its program. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions. The provisions of 10 Code of State Regulations (CSR) that Missouri proposed to revise were: (1) 10 CSR 40–3.030(4) to require that contamination of topsoil be prevented during redistribution; (2) 10 CSR 40–3.040(10)(B)5 to reference the January 1991, U.S. Natural Resources Conservation Service (formerly the Soil Conservation Service) technical document, Practice Standards 378, concerning impoundment design; (3) 10 CSR 40–3.110(3)(A)1 to clarify that the requirements of this section apply to coal seams, combustible materials, and acid- and toxic-forming materials, to require that coal processing waste and noncoal waste be covered in accordance with the regulations for disposal of coal processing waste at 10 CSR 40–3.080, and to delete the existing requirement that exposed coal seams and combustible materials, including coal processing waste, be covered with a

minimum of 4 feet of nontoxic- and nonacid-producing materials; (4) 10 CSR 40–3.110(6)(B) to provide that the regulations for repair of rills and gullies at 10 CSR 40–3.110(6)(A) apply, on areas that have been previously mined, only after final grading of the area when topsoil or a topsoil substitute is not available; (5) 10 CSR 40–6.010(2)(H) to add a definition of ''Secretary;'' (6) 10 CSR 40–6.020(2)(A) and (3)(A) to clarify that these regulations concern exploration activities outside of a permit area; (7) 10 CSR 40–6.050(7) (C) and (D), and 10 CSR 40–6.120(12) (C) and (D) to specify the information that must be included in a fish and wildlife plan and that, when the plan does not include enhancement measures, it must include an explanation of why enhancement is not practicable; (8) 10 CSR 40–6.070(8)(M) to require that the Director of the Missouri program must find, prior to permit approval for a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 10 CSR 40–4.080, that the site of the operation is a previously mined area; (9) at 10 CSR 40–8.010(1)(A)72 the definition of ''previously mined area;'' (10) at 10 CSR 40–8.010(1)(A)84 the definition of ''road;'' (11) 10 CSR 40–8.030(7)(A) to delete the requirement that modification, termination, or vacating of notice of violations must be in accordance with the regulation at 10 CSR 40–8.040; (12) 10 CSR 40–8.040(9) to delete the definition of ''habitual violator;'' and (13) 10 CSR 40–8.050(2)(B) to change the eligibility requirement of coal production of 100,000 tons per year to 300,000 tons per year for a small operator assistance applicant.

OSM announced receipt of the proposed amendment in the March 2, 1995, **Federal Register** (41 FR 11640), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. MO–618). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 3, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of Missouri's rules at 10 CSR 40–3.140(1)(A), roads and control of air pollution attendant to erosion; 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), permit application requirements for a fish and wildlife plan; and 10 CSR 40–8.050(2)(B), small operator assistance program. OSM notified Missouri of the concerns by letter dated April 10, 1995 (administrative record No. MO–627).

Missouri responded by telephone on May 9, 1995, that it would not submit revisions to the amendment and that OSM should proceed with the publishing of this final rule **Federal Register** notice (administrative record No. MO–629).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by Missouri on February 10, 1995, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Editorial Revisions to Missouri's Rules

Missouri proposed revisions to the following previously-approved rules that consist of minor editorial changes or corrections of referenced citations due in part to recodification (corresponding Federal regulation provisions are listed in parentheses):

10 CSR 40–3.100(5)2 (30 CFR 816.97(g)(3)), concerning distribution of plants to maximize benefit to fish and wildlife, by replacing a semicolon with a period at the end of a sentence;

10 CSR 40–3.100(6) (30 CFR 816.97(h)), concerning cropland as an alternative postmining land use, by replacing the term ''fields'' with ''reclaimed lands;''

10 CSR 40–3.100(7) (30 CFR 816.97(h)), concerning use of greenbelts for residential, public service, or industrial land uses, by deleting the ''s'' from the word ''lands;''

10 CSR 40–3.060(1)(L)1 (30 CFR 816.71(i)(1)), concerning the prohibition of placing coal processing wastes in head-of-hollow or valley fills, by correcting the citation of the reference for the requirements for the disposal of coal-processing waste in excess spoil fills at 10 CSR 40–3.080(4);

10 CSR 40–3.060(1)(O) (30 CFR 816.71(j)), concerning disposal of excess spoil, by correcting the citation of the reference to the requirements for permit application approval of the plan for return of coal processing waste to abandoned underground workings at 10 CSR 40–6.120(17);

10 CSR 40–3.080(8)(B) (30 CFR 816.89(b)), concerning the final disposal of noncoal wastes, by correcting the citation of the reference for revegetation requirements for surface coal mining operations at 10 CSR 40–3.120.

10 CSR 40–3.110(3)3 (30 CFR 816.102(f) and 816.41(a)), concerning the prohibition of disposal or storage of acid-forming or toxic-forming material in proximity to a drainage course, by adding the word ''forming'' in the phrase ''acid-forming or toxic-forming material;''

10 CSR 40–6.030(1)(C)(3) (30 CFR 778.13(c)(3)), concerning identification of interests for legal and financial permit application requirements, by correcting the citation of the reference for the permit condition that requires submittal of information after receipt of a cessation order at 10 CSR 40–6.070(13)(E);

10 CSR 40–6.030(5)(B) (30 CFR 778.17(b), concerning permit application requirements, by correcting the citation of the reference for information required for permit terms in excess of 5 years at 10 CSR 40–6.070(12)(A);

10 CSR 40–6.060(4)(D)(4) (30 CFR 785.17(d)(4)), concerning the requirement on prime farmland that the State conservationist review and comment on the proposed method of soil reconstruction, by correcting the citation of the reference for permit application requirements for a plan for soil reconstruction, replacement, and stabilization at 10 CSR 40–6.060(4)(C)(2); and

10 CSR 40–6.070(9)(A)1, 6.070(9)(A)2.A, and 6.070(9)(A)2.B (30 CFR 773.15(c)(6) and 701.11(d)), concerning criteria for permit approval or denial for existing structures, by correcting the citation of the reference for exemptions for existing structures at 10 CSR 40–8.070(2)(D) (1)(A), (1)(B) and (1)(C);

The Director finds that the proposed revisions to these previously-approved rules, which are editorial in nature, do not make these proposed Missouri rules less effective than the Federal regulations. The Director approves the revisions proposed to these rules.

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

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

10 CSR 40–6.010(2)(H) (30 CFR 700.5), concerning the definition of ''Secretary;''

10 CSR 40–6.070(8)(M) (30 CFR 773.15(c)(12)), concerning criteria for permit approval or denial for remining operations; and

10 CSR 40–8.010(1)(A)84 (30 CFR 701.5), concerning the definition of ''road''

Because these proposed Missouri rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Proposed Revisions to Missouri's Rules Made in Response to Required Amendments

a. 10 CSR 40–3.110(3)1, Performance Standards for Backfilling and Grading of Acid- and Toxic-Forming Materials

OSM required at 30 CFR 925.16(q)(1) that Missouri amend 10 CSR 40–3.110(3)1 by (1) requiring that exposed coal seams and combustible materials be

adequately covered or treated as required at 30 CFR 816.102(f) and (2) explaining why these two groups of materials, i.e., acid- and toxic-forming materials and exposed coal seams and combustible materials, are treated differently and clarify what is required to be demonstrated if less than 4 feet of cover is proposed (Finding No. 7, 58 FR 64142, 64144, December 6, 1993).

Missouri proposed to revise 10 CSR 40–3.110(3)1 to require that exposed coal seams, acid-forming and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material or treated to control the impact on surface and ground water in accordance with 10 CSR 40–3.040, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use. Missouri proposed to delete from 10 CSR 40–3.110(3)1 the allowance for an exception to a 4 foot cover requirement for exposed coal seams and materials, and combustible materials. Missouri also proposed to add at 10 CSR 40–3.110(3)1 a reference to its rules for covering coal processing waste and noncoal waste at 10 CSR 40–3.080.

Proposed 10 CSR 40–3.110(3)1 is substantively identical to the Federal regulation at 30 CFR 816.102(f) with the exception of the reference to Missouri's rules for covering coal processing waste and noncoal waste at 10 CSR 40–3.080. This reference does not affect the requirements in proposed 10 CSR 40–3.110(3)1 concerning exposed coal seams, acid-forming and toxic forming materials, and combustible materials.

The Director finds that proposed 10 CSR 40–3.110(3)1 is not less effective than the Federal regulation at 30 CFR 816.102(f), and satisfies the program amendment requirement at 30 CFR 925.16(q)(1). The Director approves proposed 10 CSR 40–3.110(3)1 and removes the required amendment at 30 CFR 925.16(q)(1).

b. 10 CSR 40–3.110(6)(B), Stabilization of Rills and Gullies After Backfilling and Grading

OSM required at 30 CFR 925.16(q)(2) that Missouri revise 10 CSR 40–3.110(6)(B) to require for previously mined areas, that an operator identify the best suited material available for topsoil replacement and segregate that material for later use as a topsoil substitute (Finding No. 9, 58 FR 64142, 64144, December 6, 1993).

Missouri proposed to revise 10 CSR 40–3.110(6)(B) to require, on areas that have been previously mined where topsoil or a topsoil substitute are not available, stabilization of rills and gullies pursuant to subsection (6)(A) after final grading. Missouri's rule at 10 CSR 40–3.110(6)(A) requires stabilization of rills and gullies deeper than 9 inches on areas that have been regraded and topsoiled. Although Missouri proposed to delete at 10 CSR 40–3.110(6)(B) the provision that the area need not be topsoiled, Missouri's revised 10 CSR 40–3.110(6)(B) continues to require topsoil or a topsoil substitute *if available* on reclaimed areas that have been previously mined (emphasis added).

The counterpart Federal regulations at 30 CFR 816.106, concerning previously mined areas, require that these areas comply with the requirements of 30 CFR 816.102 through 816.107. The Federal regulations at 30 CFR 816.102(d)(2) requires topsoil removal, storage, and redistribution in accordance with 30 CFR 816.22. The Federal regulations at 30 CFR 816.22 require, among other things, the removal of the topsoil, material approved as a topsoil substitute, or the topsoil and the unconsolidated materials immediately below the topsoil. There is no Federal provision for an exception to the identification of topsoil or topsoil substitutes on areas that have been previously mined.

Therefore, the Director finds that proposed 10 CSR 40–3.110(6)(B) remains less effective than the Federal regulations at 30 CFR 816.102 and 816.22 and does not satisfy the program amendment requirement at 30 CFR 925.16(q)(2). The Director approves the revisions proposed at 10 CSR 40–3.110(6)(B), and revises the required amendment at 30 CFR 925.16(q)(2) to require that Missouri further 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.

c. 10 CSR 40–3.140(1)(A), Control or Prevention of Air Pollution Attendant to Erosion at Surface Mining Operations

OSM required at 30 CFR 925.16(p)(9) that Missouri amend its program at 10 CSR 3.140(1)(A) by requiring that all exposed surfaces be stabilized in accordance with current prudent engineering practices (Finding No. 32, 57 FR 44660, 44669, September 29, 1992).

Missouri proposed to revise 10 CSR 40–3.140(1)(A), concerning the control or prevention of air pollution attendant to erosion at surface mining operations, to remove the word ''road'' from the phrase ''other exposed road surfaces.'' However, Missouri proposed to remove the word ''road'' only from the list of possible measures by which to control or prevent air pollution. The word ''road'' still exists in the portion of proposed 10 CSR 40–3.140(1)(A) that requires control or prevention of air pollution attendant to erosion, including dust occurring ''on other exposed *road* surfaces'' (emphasis added).

The Federal regulations at 30 CFR 816.150(b)(1) require that each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as 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, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices. To fully satisfy the required amendment, Missouri must further revise proposed 10 CSR 40–3.140(1)(A) to delete the first occurrence of the word ''road'' in the phrase ''other exposed road surfaces.''

Therefore, the Director finds that (1) proposed 10 CSR 40–3.140(1)(A) remains less effective than the Federal regulations at 30 CFR 816.150(b)(1) and (2) Missouri has not satisfied the program amendment requirement at 30 CFR 925.16(p)(9). The Director approves the revisions proposed at 10 CSR 40–3.140(1)(A), but does not remove the required amendment at 30 CFR 925.16(p)(9).

d. 10 CSR 40–6.050(7)(C), 40–6.050(7)(D), 40–6.120(12)(C), and 40–6.120(12)(D), Surface and Underground Coal Mining and Reclamation Operations Permit Application Requirements for Protection of Fish and Wildlife

OSM required at 30 CFR 925.16(b)(4) that Missouri amend its program to indicate that the informational requirements of the rules, concerning a description of protective measures that will be used during the active mining phase of operations, must be included in the fish and wildlife plan; require a description of the enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat; and require the fish and wildlife protection and enhancement plan requirements also apply to species or habitats protected by State laws similar to the Endangered Species Act of 1973 and to threatened or endangered species or plants or animals proposed as well as listed

under the Endangered Species Act of 1973 or similar State statutes (Finding No. 5, 55 FR 22907, 22910, June 5, 1990).

Missouri has proposed revisions at 10 CSR 40–6.050(7)(C), 40–6.050(7)(D), 40–6.120(12)(C), and 40–6.120(12)(D), that, as discussed below, satisfy the program amendment requirement at 30 CFR 925.16(b)(4). Therefore, the Director removes the required amendment at 30 CFR 925.16(b)(4).

i. 10 CSR 40–6.050(7)(C) and 40–6.120(12)(C), Informational requirements for a fish and wildlife plan. Missouri proposed to revise 10 CSR 40–6.050(7)(C) and 6.120(12)(C), concerning surface and underground coal mining and reclamation operations permit application requirements, to require that the statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance fish and wildlife ''must be included in the fish and wildlife plan.'' These proposed revisions of 10 CSR 40–6.050(7)(C) and 6.120(12)(C)(1) are no less effective than the Federal regulations at 30 CFR 780.16(b) and 784.21(b) and (2) satisfy the requirement at 30 CFR 925.16(b)(4) concerning the informational requirements that must be included in a fish and wildlife plan. The Director approves the revisions proposed at 10 CSR 40–6.050(7)(C) and 6.120(12)(C).

ii. 10 CSR 40–6.050(7)(D) and 40–6.120(12)(D), Minimum contents of a fish and wildlife plan. Missouri proposed addition of new rules at 10 CSR 40–6.050(7)(D) and 40–6.120(12)(D), concerning surface and underground coal mining and reclamation operations permit application requirements, that specify the minimum contents of a fish and wildlife plan. With one exception, proposed 10 CSR 40–6.050(7)(D) and 6.120(12)(D) are substantively identical to the counterpart Federal regulations at 30 CFR 780.16(b) and 784.21(b) and satisfy the program amendment requirement at 30 CFR 925.16(b)(4).

The exception concerns Missouri's requirement, proposed at 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), that the description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable ''shall be consistent with this section.'' The counterpart Federal regulations at 30 CFR 780.16(b)(1) and 784.21(b)(1) require that this description be consistent with the requirements of the performance standards at 30 CFR 816.97 and 817.97. Missouri's corresponding performance standards for the protection of fish, wildlife, and related environmental values are at 10 CSR 40–3.100 and 10 CSR 40–3.250.

Therefore, the Director finds, with the exception of proposed 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), proposed 10 CSR 40–6.050(7)(D) and 40–6.120(12)(D) are no less effective than the Federal regulations at 30 CFR 780.16(b) and 784.21(b). With the exception of proposed 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), the Director approves proposed 10 CSR 40–6.050(7)(D) and 40–6.120(12)(D). The Director is adding a new required amendment stating that Missouri must revise proposed 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 must be consistent with, respectively, its performance standards for protection of fish, wildlife, and related environmental values at 10 CSR 40–3.100 and 10 CSR 40–3.250.

e. 10 CSR 40–8.010(1)(A)72, Definition of ''Previously Mined Area''

OSM required at 30 CFR 925.16(q)(3) that Missouri amend 10 CSR 40–8.010(1)(A) by furnishing a definition for ''previously mined area'' (Finding No. 17.b, 58 FR 64142, 64147, December 6, 1993).

Missouri proposed revising 10 CSR 40–8.010(1)(A) by adding a definition of ''previously mined area'' at 10 CSR 40–8.010(1)(A)72 which is substantively identical to the Federal definition of ''previously mined area'' at 30 CFR 701.5.

The Director finds that proposed 10 CSR 40–8.010(1)(A)72 is no less effective than the Federal definition of ''previously mined area'' at 30 CFR 701.5 and satisfies the program amendment requirement at 30 CFR 925.16(q)(3). The Director approves proposed 10 CSR 40–8.010(1)(A)72 and removes the required amendment at 30 CFR 925.16(q)(3).

f. 10 CSR 40–8.030(7), Extension of an Abatement Period for a Notice of Violation (NOV)

OSM required at 30 CFR 925.16(q)(4) that Missouri amend 10 CSR 40.8.030(7)(A) by removing the phrase ''in accordance with 10 CSR 40–8.040'' or by providing the proper citation to the State rule that addresses extension of time for abatement of NOVs (Finding No. 18, 58 FR 64142, 64148, December 6, 1993).

Missouri proposed to revise 10 CSR 40–8.030(7)(A), concerning the allowance to extend an abatement period for a notice of violation, by deleting the phrase '' in accordance with 10 CSR 40–8.040,'' a reference to its rules concerning penalty assessments.

The Director finds that proposed 10 CSR 40–8.030(7)(A) is no less effective than the Federal regulations at 30 CFR 843.12(c) and satisfies the program amendment requirement at 30 CFR 925.16(q)(4). The Director approves proposed 10 CSR 40–8.030(7)(A) and removes the required amendment at 30 CFR 925.16(q)(4).

g. 10 CSR 40–8.040, Penalty Assessments

OSM required at 30 CFR 925.16(q)(5) that Missouri amend 10 CSR 40–8.040 by removing its rules concerning habitual violators at 10 CSR 40–8.040(9) (Finding No. 20, 58 FR 64142, 64148, December 6, 1993).

Missouri proposed to revise 10 CSR 40–8.040, concerning penalty assessments, by deleting 10 CSR 40–8.040(9) and recodifying existing 10 CSR 40–8.040(10) and (11) as 10 CSR 40–8.040(9) and (10). Deleted 10 CSR 40–8.040(9) included a definition of ''habitual violator'' and requirements regarding civil penalties for habitual violators.

The Director finds that Missouri's proposed deletion of 10 CSR 40–8.040(9) is consistent with the Federal regulations at 30 CFR 843 and 845 and satisfies the program amendment requirement at 30 CFR 925.16(q)(5). The Director approves the proposed deletion of 10 CSR 40–8.040(9) and removes the required amendment at 30 CFR 925.16(q)(5).

4. 10 CSR 40–3.030(4)(B)2, Prevention of Contamination of the Topsoil During Redistribution

Missouri proposed to revise 10 CSR 40–3.030(4)(B)2 to require prevention of contamination of topsoil during its redistribution. Missouri stated that this provision was revised to be consistent with section 444.855.2(5) of the Revised Statutes of Missouri (RSMo).

The counterpart Federal regulation at 30 CFR 816.22(d)(ii), concerning redistribution of topsoil, has no such requirement. However, section 444.855.2(5) of RSMo is identical to section 515(b)(5) of SMCRA. Both section 444.855.2(5) of RSMo and section 515(b)(5) of SMCRA require, with respect to stockpiled or stored topsoil, that the topsoil remain free of any contamination by other acid or toxic material.

The requirement to prevent contamination of topsoil during its redistribution proposed at 10 CSR 40–3.030(4)(B)2 is consistent with and no less stringent than section 515(b)(5) of SMCRA and no less effective than the Federal regulations at 30 CFR 816.22 regarding topsoil storage and redistribution. Therefore, the Director approves proposed 10 CSR 40–3.030(4)(B)2.

5. 10 CSR 40–3.040(10)(B)5, Performance Standards for Impoundments

Missouri proposed to revise, at 10 CSR 40–3.040(10)(B)5, the requirements concerning design, construction, and maintenance of impoundments that protect the hydrologic balance during surface coal mining operations. Specifically, Missouri proposed to revise the date of the referenced U.S. Natural Resources Conservation Service (NRCS, formerly the Soil Conservation Service) ''Practice Standards 378, Ponds'' from October 1978 to January 1991. This referenced document contains the design and construction requirements for permanent impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) approved in a surface mining operation permit.

Missouri's proposed 10 CSR 40–3.040(10)(B)5 is no less effective than the design and construction requirements in the Federal regulations at 30 CFR 816.49(a) for impoundments that do not meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216(a).

However, the Federal regulations at 30 CFR 780.25 and 784.16 were revised to require that all impoundments meeting the Class B or C criteria of the U.S. Department of Agriculture, NRCS Technical Release No. 60 (210–VI–TR60, Oct. 1985), Earth Dams and Reservoirs, comply with the requirements of the Federal regulations for structures that meet or exceed the size or other criteria of MSHA. And the Federal regulations at 30 CFR 816.49 and 817.49 were revised to require that any impoundment meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, NRCS Technical Release No. 60 (210–VI–TR60, Oct. 1985), Earth Dams and Reservoirs, comply with ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60 as well as the requirements of 30 CFR 816.49 and 817.49 (59 FR 53022, October 20, 1994).

OSM will evaluate all State programs to ascertain the need for revision to be no less effective than the revised Federal regulations at 30 CFR 780.25, 784.16, 816.49, and 817.49. At that time, OSM will notify Missouri, in accordance with the Federal regulations at 30 CFR 732, of the need to revise its regulations at 10 CSR 40–6.040(11), 6.120(7), 3.040(10), and 3.200(10) to include the hazard classification criteria for impoundments.

At this time, based on the above discussion, the Director finds that proposed 10 CSR 40–3.040(10)(B)5 is no less effective than the Federal regulations at 30 CFR 816.49(a) with regard to impoundments that (1) do not meet the NRCS class B or C hazard classification criteria and (2) do not meet or exceed the size of other criteria of 30 CFR 77.216(a). The Director approves proposed 10 CSR 40–3.040(10)(B)5 to the extent that its requirements apply only to impoundments that (1) do not meet the NRCS class B or C hazard classification criteria and (2) do not meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a). The Director does not approve proposed 10 CSR 40–3.040(10)(B)5 to the extent that it does not exclude permanent impoundments that meet the NRCS class B or C hazard classification criteria from the design and construction requirements in the NRCS ''Practice Standards 378, Ponds,'' dated January 1991.

6. 10 CSR 40–6.020(2)(A) and 40–6.020(3)(A), Requirements for Coal Exploration

Missouri proposed revisions at 10 CSR 40–6.020(2)(A) and 10 CSR 40–6.020(3)(A), concerning applications and permits for coal exploration during which, respectively, less than and more than 250 tons of coal will be removed. Specifically, Missouri proposed to delete the phrase ''outside a permit area'' with regard to the location of a proposed coal exploration operation. The effect of Missouri's proposed revisions is to require exploration applications or permits regardless of where the exploration operation occurs. Missouri stated in its proposed amendment that these revisions were proposed in order to remove confusing language and clarify the requirements for obtaining coal exploration permits.

The counterpart Federal regulations at 30 CFR 772.11 and 772.12 include the phrase ''outside a permit area'' with regard to the location of coal exploration operations that must obtain approved applications or permits. These Federal regulations exclude coal exploration operations from the requirements of 30 CFR 772.11 and 772.12 if the exploration operations occur within the boundaries of an existing surface coal mining and reclamation operation permit.

Missouri's proposed 10 CSR 40–6.020(2)(A) and 10 CSR 40–6.020(3)(A) are more inclusive of the requirement to obtain exploration applications and permits than are the counterpart Federal regulations. Therefore, the Director finds that proposed 10 CSR 40–6.020(2)(A) and 10 CSR 40–6.020(3)(A) are no less effective than the Federal regulations at 30 CFR 772.11 and 772.12 and approves the proposed rules.

7. 10 CSR 40–8.050(2)(B), Small Operator Assistance Program

Missouri proposed to revise 10 CSR 40–8.050(2)(B) to increase, from 100,000 tons to 300,000 tons, the amount of coal an operator can mine and be considered eligible for small operator assistance.

The Abandoned Mine Reclamation Act of 1990 (AMRA), as amended, was reauthorized on November 5, 1990, when the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 was enacted. Included in AMRA was new legislation that raised the annual coal production limit from 100,000 to 300,000 tons for eligibility under SOAP authorized at section 507(c) of SMCRA.

Therefore, the Director finds that Missouri's proposed revision of 10 CSR 40–8.050(2)(B) is consistent with and no less stringent than section 507(c) of SMCRA as amended by AMRA. The Director approves the proposed rule.

IV. Summary and Disposition of Comments

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

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Missouri program.

The Natural Resources Conservation Service responded on March 3, 1995, that it had no comments concerning the proposed amendments (administrative record No. MO–616).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to

those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Missouri proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. MO–614. It did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Missouri's proposed amendment as submitted on February 10, 1995.

The Director does not approve, as discussed in Finding No. 5, 10 CSR 40–3.040(10)(B)5, to the extent it does not exclude permanent impoundments that meet the NRCS class B or C hazard classification criteria from the design and construction requirements in the NRCS ''Practice Standards 378, Ponds,'' dated January 1991.

With the requirement that Missouri further revise its rules, the Director does not approve, as discussed in Finding No. 3.d.ii, 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), concerning the fish and wildlife plan.

With the requirement that Missouri further revise its rules, the Director approves, as discussed in: Finding No. 3.b, 10 CSR 40–3.110(6)(B), Finding No. 3.c, 10 CSR 40–3.140(1)(A), concerning the control or prevention of air pollution attendant to erosion at surface mining operations; and Finding No. 3.d.ii, 10 CSR 40–6.050(7)(D) and 40–6.120(12)(D), concerning the fish and wildlife plan.

The Director approves, as discussed in: Finding No. 1, 10 CSR 40–3.100(5)2, (6), and (7), 40–3.060(1)(L)1 and (O), 40–3.080(8)(B), 40–3.110(3)3, 40–6.030(1)(C) and (5)(B), 40–6.060(4)(D)(4), 40–6.070(9)(A)1 and 40–6.070(9)(A)2.A and 2.B, concerning minor editorial revisions or corrections of referenced citations; Finding No. 2, 10 CSR 40–6.010(2)(H), 40–6.070(8)(M), and 40–8.010(1)(A)84, concerning substantive revisions that are substantively identical to the corresponding Federal regulations; Finding Nos. 3.a, 3.d.i, 3.e, 3.f, and 3.g, 10 CSR 40–3.110(3)1, 40–6.050(7)(C) and 40–6.120(7)(C), 40–8.010(1)(A)72, 40–8.030(7)(A), and 40–8.040(9), concerning responses to required amendments; Finding No. 4, 10 CSR 40–3.030(4)(B)2, concerning topsoil; Finding No. 5, 10 CSR 40–3.040(10)(B)5, concerning design and construction of impoundments, to the extent that its requirements apply only to impoundments that (1) do not meet the NRCS class B or C hazard classification criteria and (2) do not meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a); Finding No. 6, 10 CSR 40–6.020(2)(A) and (3)(A), concerning coal exploration; and Finding No. 7, 10 CSR 40–8.050(2)(B), concerning small operator's assistance.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 925.16 that, within 60 days of the publication of this final rule, Missouri must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Missouri's established administrative or legislative procedures.

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

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

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. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Missouri program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

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

PART 925—MISSOURI

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

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

2. Section 925.15 is amended by adding paragraph (s) to read as follows:

§ 925.15 Approval of amendments to the Missouri regulatory program.

* * * * *

(s) With the exception of 10 CSR 40–3.040(10)(B)5, to the extent it does not exclude permanent impoundments that meet the NRCS class B or C hazard classification criteria from the design and construction requirements in the NRCS ''Practice Standards 378, Ponds,'' dated January 1991; and 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), concerning the requirement that a fish and wildlife plan in applications for surface and underground mining operations be consistent with the performance standards for protection of fish, wildlife, and related environmental values at 10 CSR 40–3.100 and 10 CSR 40–3.250, revisions to the following rules, as submitted to OSM on February 10, 1995, are approved effective July 13, 1995:

10 CSR 40–3.030(4)(B)2, performance standards concerning topsoil redistribution;

10 CSR 40–3.040(10)(B)5, performance standards concerning design and construction of certain impoundments;

10 CSR 40–3.060(1)(L)1 and (0), performance standards concerning the disposal of coal processing wastes and excess spoil;

10 CSR 40–3.080(8)(B), performance standards concerning the final disposal of noncoal wastes;

10 CSR 40–3.100(5)2, (6), and (7), performance standards concerning protection of fish and wildlife;

10 CSR 40–3.110(3)1, (3)3, and (6)(B) performance standards concerning disposal or storage of acid-forming or toxic-forming material;

10 CSR 40–3.140(1)(A), performance standards concerning the control or prevention of air pollution attendant to erosion at surface mining operations;

10 CSR 40–6.010(2)(H), concerning the definition of ''Secretary;''

10 CSR 40–6.020(2)(A) and (3)(A), concerning coal exploration;

10 CSR 40–6.030(1)(C) and (5)(B), and 6.050(7)(C) and (7)(D), concerning permit application requirements for surface mining operations;

10 CSR 40–6.060(4)(D)(4), concerning permit application requirements for operations involving prime farmland;

10 CSR 40–6.070(8)(M), (9)(A)1, and (9)(A)2.A and 2.B, concerning criteria for permit approval or denial for remining operations and existing structures;

10 CSR 40–6.120(7)(C) and (12)(D), concerning permit application requirements for underground mining operations;

10 CSR 40–8.010(1)(A)72 and 84, concerning the definitions for ''previously mined area'' and ''road;''

10 CSR 40–8.030(7)(A), concerning the extension of an abatement period for a notice of violation;

10 CSR 40–8.040(9), concerning the deletion of a definition for ''habitual violator'' and requirements regarding civil penalties for habitual violators; and

10 CSR 40–8.050(2)(B), concerning small operator's assistance.

3. Section 925.16 is amended by removing and reserving paragraphs (b)(4), (q)(1), and (q)(3) through (q)(5); revising paragraph (q)(2); and adding paragraph (u) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(q)(2) By September 11, 1995, Missouri shall revise 10 CSR 40–3.110(6)(B) or otherwise modify its program, 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.

* * * * *

(u) By September 11, 1995, Missouri shall revise 10 CSR 40–6.050(7)(D)(1) and 40–6.120(12)(D)(1), or otherwise modify its program, to require that the description in the fish and wildlife plan must be consistent with, respectively, its performance standards for protection of fish, wildlife, and related environmental values at 10 CSR 40–3.100 and 10 CSR 40–3.250.

[FR Doc. 95–17167 Filed 7–12–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is adopting an exemption for the system of records identified as DGC 16, entitled Political Appointment Vetting Files. DGC 16 was previously published on March 15, 1995, at 60 FR 14273. The DoD General Counsel performs suitability screening of individuals seeking, or who have been recommended for, non-career positions within the DoD.

EFFECTIVE DATE: May 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.