PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

§§ 7.367(a)-1 and 7.367-2 [Removed]

Par. 2. Sections 7.367(a)-1 and 7.367-2 are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. Section 301.7477-1 is amended by revising paragraph (a)(3) and the last sentence of paragraph (b)(2) to read as follows:

§ 301.7477-1 Declaratory judgments relating to transfers of property from the United States.

(a) *Petition*—* * *

(3) *Beginning of exchange.* An exchange generally shall be considered to begin upon the beginning of the first transfer of property pursuant to the plan under which the exchange is to be made. For rules determining the beginning of a transfer, see § 1.367(a)-1(c)(4).

* * * * *

(b) *Judgment*—* * *

(2) *Exhaustion of administrative remedies.* * * * In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

* * * * *

This Treasury decision is issued under the authority contained in sections 367(a)(1) (90 Stat. 1634, 26 U.S.C. 367(a)(1)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Management and Budget under control number 1545-0719.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 20, 1984.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 84-12374 Filed 5-7-84; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-174 RE: Notice No. 490]

Clear Lake Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area located within southwest Lake County, California, known as "Clear Lake." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of "Clear Lake" as a viticultural area and subsequent use as an appellation of origin on wine labels and advertisements will allow wineries to better designate the specific grape-growing areas where their wines come from and will enable wine consumers to better identify the wine they purchase.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition for Clear Lake

ATF was petitioned by three of the grape-growers and winery owners located in an area surrounding the watershed of Clear Lake in southwestern Lake County, California. The viticultural area is known as "Clear Lake."

The viticultural area is located entirely within Lake County between the Mayacamas Mountains to the southwest and the Mendocino National Forest to the northeast. It extends to the southeast to just north of the "Guenoc Valley" viticultural area which is also located in Lake County. The "Clear Lake" viticultural area is located entirely within the boundaries of a larger viticultural area known as "North Coast."

The area encompassed by the boundaries consists of 168,960 acres or 264 square miles of valley and upland terrain surrounding Clear Lake. Prominent among the growing areas contiguous to Clear Lake, and which fall within the viticultural area designation, are Big Valley, Scotts Valley, Upper Lake, Clearlake Oaks and Lower Lake.

Evidence provided by the petitioners states that there are over 3,000 acres planted to vines, and the viticultural area now has three commercial wineries, two located in the Big Valley area, a third in Lower Lake, and others being planned.

In response to this petition ATF published a notice of proposed rulemaking, No. 490 in the **Federal Register** on October 20, 1983, (48 FR 48685) proposing the establishment of the "Clear Lake" viticultural area.

Historical or Current Evidence of Boundaries

The boundaries of the "Clear Lake" viticultural area are historically defined as those valley and upland terrain areas that surround Clear Lake. Clear Lake is a large natural fresh water lake that is centrally located in the viticultural area. The "Clear Lake" viticultural area is rimmed by steep surrounding mountains ranging in elevation to over 4,000 feet above sea level. The Clear Lake region has been known as a popular resort area and agricultural center since it was first settled in the Nineteenth Century. In recent years there has been a significant return of vineyard development found within the boundaries of the "Clear Lake" viticultural area.

The boundaries of the viticultural area may be found on four (4) U.S.G.S. quadrangle (Topographic) maps, 15 minute series, scale 1:62,500—Lower Lake, Clearlake Oaks, Lakeport and Kelseyville. The specific boundaries for the viticultural area are detailed in the regulation portion of this document at 27 CFR 9.99(c) which immediately follows in the preamble to this final rule.

After carefully considering the boundaries and supporting evidence submitted, ATF is adopting the "Clear Lake" viticultural area boundaries stated in the notice of proposed rulemaking and found in this final rule.

Geographical Features

The petitioner claimed and ATF agrees that the "Clear Lake" viticultural area is distinguished from the surrounding areas on the basis of elevation, watershed and climate. The

petitioner based these claims on the following evidence that has been verified by ATF:

(a) *Elevation.* The Mendocino National Forest on the northeastern boundary and the Mayacamas Mountain Range on the southwestern boundary geographically isolate the Clear Lake area from surrounding areas. Both of these mountain areas have heavily forested rugged terrains. In addition, because it is Federally controlled land, the Mendocino National Forest is unavailable for cultivation. The viticultural area is rimmed by steep surrounding mountains ranging in heights to over 4,000 feet. The prominent inactive volcanic mountain, Mt. Konocti (elevation 4,300 feet) rises from the western edge of Clear Lake and dominates the countryside. The lake itself, which is centrally located within the viticultural area is 1,300 feet above sea level and the largest natural body of fresh water in California (70.5 square miles). Because of its size and location, Clear Lake has a demonstrable influence on the grape-growing areas immediately surrounding it.

The 3,000 acres currently planted around the lake are located at altitudes of 1,300 to 1,800 feet. In comparison, the vineyard areas of Mendocino County located to the west of Clear Lake have average altitudes of less than 700 feet. The vineyard areas of Napa and Sonoma Counties located to the south of Clear Lake are less than 100 feet in altitude.

(b) *Climate and Watershed.* The Clear Lake viticultural area is close enough to the Pacific Ocean to be influenced by the maritime coastal air that flows through the gaps in the mountains located to the west. The coastal air flows gently across Clear Lake, cooling the area surrounding it in the summer. This coastal air does not penetrate the high mountains to the east of Clear Lake. On the east side of that mountain area the climate is much warmer, with little air flow.

The Clear Lake viticultural area has a unique climate pattern, different than the other north coastal areas. The feature distinguishing Clear Lake from the surrounding areas is the unique influence of the Clear Lake watershed. Clear Lake serves to moderate the temperatures in the viticultural area throughout the year by creating both a favorable warming temperature influence in the winter and a cooling influence in the summer.

Clear Lake's cold nights offset the daytime heat which makes the viticultural area uniformly cooler than anywhere else in the surrounding north coastal counties. Also, the absence of wind and fog conditions makes the Clear Lake viticultural area different from the surrounding areas.

According to the publication entitled "Climatography of the United States No. 81-4, Decennial Census of U.S. Climate," the growing season in Clear Lake is 223 days which is shorter than the surrounding areas.

The average rainfall per year for the Clear Lake area is about 37 inches. The average rainfall at the Middletown area of Lake County located to the south of the proposed viticultural area is about 62 inches per year. The adjacent counties of Sonoma and Mendocino have rainfalls averaging 32 and 39 inches per year, respectively.

Viticultural Area Name

The petitioner claimed and ATF agrees that the viticultural area is locally and nationally known by the name "Clear Lake." The petitioner based this claim on the following evidence that has been verified by ATF:

(a) Clear Lake, the largest natural fresh water lake located entirely within the boundaries of California, identifies the principal inhabited region of Lake County. For over a century the Clear Lake region has been a popular resort and agricultural center.

(b) Mr. Ernest P. Penninov the author of "A History of the Lake County Early Grape and Wine Industry," documented events about the people that first settled around the Clear Lake area and their relationship to the development of the local wine industry. He said, that in 1865 a group of San Francisco entrepreneurs organized the Clear Lake Water Company with the purpose of impounding water from Clear Lake for use in San Francisco.

(c) By the turn of the century newspaper stories of the period told of groups of people ferrying around Clear Lake stopping at various wineries for drinks.

(d) Several wineries that have been selling wines on a local and national level have used the name Clear Lake on their bottle labels to further identify their products.

(e) Some localities within the viticultural area that use the name Clear Lake in their heritage are Clearlake Oaks, Clearlake Park, Clearlake Highlands and Clear Lake State Park. United States Geographical Survey maps document this information.

No Comments Received

The notice of proposed rulemaking, Notice No. 490, contained a 45 day comment period. In it, ATF invited comments from interested parties regarding two issues.

The first issue dealt with historical or current evidence as to whether the viticultural area boundaries are as specified in the petition.

The second issue that ATF requested comments from the public on, dealt with alternative boundaries. Comments were invited on data concerning the geographical and viticultural characteristics which distinguish the viticultural area from the surrounding areas.

No comments were received during the comment period regarding either of these two issues.

Having analyzed and evaluated all of the information submitted, ATF is adopting the "Clear Lake" viticultural area as proposed.

Miscellaneous

ATF does not wish to give the impression by approving "Clear Lake" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, "Clear Lake" wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of "Clear Lake" wines.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will allow the petitioners and other persons to use an appellation of origin, "Clear Lake," on wine labels and in wine advertising. ATF has determined that this final rule neither imposes new requirements on the public nor removes privileges available to the public. This final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in—

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and supporting documents are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Ave., NW, Washington, DC 20226.

Drafting Information

The principal author of this document is Edward A. Reisman, Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.99 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.99 Clear Lake

* * * * *

Par. 2. Subpart C is amended by adding § 9.99 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.99 Clear Lake.

(a) *Name.* The name of the viticultural area described in this section is "Clear Lake."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Clear Lake viticultural area are four U.S.G.S. maps. The maps are titled as follows:

(1) "Lower Lake Quadrangle, California," 15 minute series, 1958;

(2) "Clearlake Oaks Quadrangle, California," 15 minute series, 1960;

(3) "Lakeport Quadrangle, California," 15 minute series, 1958;

(4) "Kelseyville Quadrangle, California," 15 minute series, 1959.

(c) *Boundaries.* The Clear Lake viticultural area is located in southwestern Lake County, California. The descriptive boundaries of the viticultural area, using landmarks and points of reference on the applicable U.S.G.S. maps, are as follows:

Lower Lake Quadrangle Map (15 minute series); From the beginning point on Mt. Hannah in Section 16, Township 12 North (T12N), Range 8 West (R8W), identified as having an elevation of 3,978 feet, the boundary runs—

(1) East-southeasterly in a straight line to the point on Seigler Mountain in Section 23, T12N/R8W, identified as having an elevation of 3,692 feet;

(2) Then east-southeasterly in a straight line to the point on Childers Peak in Section 34, T12N/R7W, identified as having an elevation of 2,188 feet;

(3) Then east-northeasterly in a straight line to the point on the southeast corner of Section 25, T12N/R7W;

(4) Then northeasterly in a straight line to the point in Section 16, T12N/R6W, identified as being the "Baker Mine;"

(5) Then northwesterly in a straight line to the point at the southeast corner of Section 23, T13N/R7W;

(6) Then northerly along the east line of Sections 23, 14, 11, and 2, to the point at the northeast corner of Section 2, T13N/R7W, on the Clearlake Oaks Quadrangle map;

Clearlake Oaks Quadrangle Map (15 minute series); Continuing from the northeast corner of Section 2, T13N/R7W—

(7) Then northwesterly in a straight line to the point in Section 21, T14N/R7W, at the top of Round Mountain

(8) Then northwesterly in a straight line to the southeast corner of Section 4, T14N/R8W;

Lakeport Quadrangle Map (15 minute series); Continuing from the southeast corner of Section 4, T14N/R8W, on the Clearlake Oaks Quadrangle Map—

(9) Then northwesterly on the Lakeport Quadrangle in a straight line to a point on Charlie Alley Peak in Section 28, T16N/R9W, identified as having an elevation of 3,482 feet;

(10) Then westerly in a straight line to a point on Hells Peak in Section 29, T16N/R10W, identified as having an elevation of 2,325 feet;

(11) The southeasterly in a straight line to a point on Griner Peak in Section 23, T15N/R10W, identified as having an elevation of 2,132 feet;

(12) Then southwesterly in a straight line to a point on Scotts Mountain in Section 8, T14N/R10W, identified as having an elevation of 2,380 feet;

(13) Then southeasterly in a straight line to a point on Lakeport Peak in Section 35, T14N/R10W, identified as having an elevation of 2,180 feet;

Kelseyville Quadrangle Map (15 minute series); Continuing from Lakeport Peak in Section 35, T14N/R10W, on the Lakeport Quadrangle Map—

(14) Then southeasterly in a straight line to the point at the southwest corner of Section 1, T13N/R10W;

(15) Then south by southeast in a straight line to the point at the southeast corner of Section 36, T13N/R10W;

(16) Then south by southeasterly in a straight line to the point at the southwest corner of Section 18, T12N/R8W;

(17) Then east by northeast in a straight line to the beginning point at Mount Hannah, Section 16, T12N/R8W, on the Lower Lake Quadrangle Map.

Signed: April 11, 1984.

Stephen E. Higgins,

Director.

Approved: April 30, 1984.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 84-12337 Filed 5-7-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of Permanent Program Amendments From the State of Missouri Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On April 13, 1983, the State of Missouri submitted to OSM revised statutory and regulatory performance bond and enforcement provisions as program amendments.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations, with the exception of several provisions discussed below.

Accordingly, the Director is approving those amendments which are consistent and has notified Missouri, pursuant to 30 CFR 732.17, of additional program amendments which are required. Missouri must, pursuant to 30 CFR 732.17(f), respond to this notification within 60 days.

The Federal rules at 30 CFR Part 925 which codify decisions concerning the Missouri program are being amended to implement these actions.

EFFECTIVE DATE: May 8, 1984.

ADDRESSES: Copies of the Missouri program and the Administrative Record on the Missouri program are available for pubic inspection and copying during business hours at:

Office of Surface Mining, Kansas City Field Office, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–3920.

Office of Surface Mining, Room 5124, 1100 L Street, NW., Washington, D.C. 20240; Telephone: (202) 343–7896.

Missouri Department of Natural Resources, Land Reclamation Commission, P.O. Box 1368, 1026D Northeast Drive, Jefferson City, Missouri 65102; Telephone: (314) 751–3241.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–3920.

SUPPLEMENTARY INFORMATION:

I. Background

The Missouri program was approved on November 21, 1980 (45 FR 77017–77028). The approval was conditioned on the correction of 23 minor deficiencies, which were included in three conditions, (a), (b), and (c). Condition (a) consisted of (a)(1) through (a)(21). The Secretary removed the first six elements of condition (a)(1), conditions (a)(2) through (a)(21), and conditions (b) and (c) on May 11, 1982 (47 FR 20116–20119). The Secretary removed the last element of condition (a)(1) on January 17, 1983 (48 FR 1956). Information pertinent to the general background, revisions, modifications, and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980 **Federal Register** (45 FR 77017).

On April 13, 1983, Missouri submitted a proposed program amendment (Administrative Record No. MO–253), consisting of enacted legislation (Senate Bill 737) and promulgated regulations to amend the performance bond and enforcement provisions of the Missouri program. Senate Bill 737 revises the Missouri statute by repealing sections 444.805 and 444.830, and adding new sections 444.805, 444.830, 444.950, 444.955, 444.960, 444.965 and 444.970. The Missouri revised regulations amend 10 CSR 40–3.120, 40–3.270, 40–4.030 and 40–8.030, rescind 40–7.010, 40–7.020, 40–7.030 and 40–7.040, and add new sections 40–7.011, 40–7.021, 40–7.031, 40–7.041, and 40–7.050.

The program amendments create and implement a coal mine land reclamation fund to be used to complete reclamation after the proceeds from any applicable performance bond have been exhausted. All permittees are required to pay an assessment to the fund based on the tonnage of coal sold, shipped or otherwise disposed of. The amendments also revise the related standards for revegetation success and the associated enforcement provisions.

OSM published a notice in the **Federal Register** on May 9, 1983, announcing receipt of the amendments, and procedures for the public comment period and for requesting a public hearing on the adequacy of the amendment (48 FR 20764). The public comment period ended June 8, 1983. The **Federal Register** stated that a public hearing would be held only if requested. No one requested a public hearing, so none was held.

During this period, OSM's review of Missouri's proposed amendments identified several concerns. On November 17, 1983, OSM met with the State to discuss the amendment. Those discussions were continued during a conference call on November 18, 1983. Minutes of the discussions held on November 17 and 18 were placed in the Administrative Record (MO–258), as was a December 22, 1983 letter from the State commenting on the minutes of the meeting (MO–259).

On January 19, 1984, OSM published a notice in the **Federal Register** reopening and extending the public comment period on Missouri's proposed amendments in light of the meeting notes and the State's response (49 FR 2268). That comment period ended on Febuary 3, 1984.

II. Director's Findings

A. General Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17, that the amendments submitted by Missouri on April 13, 1983, meet the requirements of SMCRA and the Federal regulations with the exception of several provisions discussed below. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Unless specifically stated, the Director approves the revisions to the Missouri law and regulations.

Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions are not specifically discussed are found to be consistent with the Act and no less effective than the Federal regulations. All of the provisions involved in the amendment are cited at the end of this notice in the amendatory language for Sections 925.15 and 925.16. Missouri has also made numerous non-substantive, primarily typographical, changes to its statute and regulations. The Director finds the corrections consistent with SMCRA and the Federal regulations.

The amendment submitted by Missouri establishes an alternative bonding system under section 509(c) of the Act. Section 509(c) allows the Secretary (through OSM) to approve as part of a State program "an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." Section 509 requires that a bond be posted sufficient to cover the cost of reclamation if it had to be performed by the regulatory authority in the event of forfeiture. The revised Federal bonding regulations, 30 CFR 800.11(e) (48 FR 62932, July 19, 1983), require an alternative bonding system to: (1) assure that sufficient funds will be available to cover reclamation costs and (2) provide substantial economic incentive for the permittee to comply with reclamation requirements. Missouri's alternative bonding system meets these criteria by: (1) Requiring operators to supply a reclamation bond and pay fees based on the tonnage of coal produced, and (2) imposing 25 cents per ton penalties, in addition to normal civil penalties, for delinquent payment of fees and for delinquent reclamation. These requirements should provide sufficient funds and a strong economic incentive to reclaim.

The alternative system proposed by Missouri establishes a coal mine land reclamation fund (the fund) to underwrite bonding of surface mining and reclamation operations in the State. Operators are required to supply a surety or other bond of up to $500 per acre and are assessed a fee of 30 cents per ton or the first 50,000 tons of coal sold in a calendar year and 20 cents per ton for the next 50,000 tons sold from the permittee's Missouri operations. This fee, plus certain other fees, go into the fund. In case of operator default on reclamation, and after bond amounts are exhausted, the fund will be used to complete any remaining reclamation on the defaulted areas. This fund differs slightly from most other State reclamation funds presently in use because the operator's per acre bond can be fully released after "pit reclamation", that is, after backfilling, regrading, placement of topsoil and initial seeding of the pit area. Operator liability is maintained on the areas during phase II and phase III reclamation periods (revegetation and extended liability period). However, in lieu of the operator bond, the fund serves as the bond on the areas for these phases. The operator is required to go through formal release procedures, including public participation, before liability is released.

As with other such alternative bonding systems, the Director requires, as part of the approval of the program amendment and as part of OSM's oversight of the Missouri program, that the State provide to OSM a periodic report, not less than annually, with the first report due May 1, 1985, evaluating the adequacy of the fund. This report must incude, at a minimum, the following items: (1) How the fund is continually sufficient to cover any reclamation costs on forfeited acres which are not covered by bond forfeiture amounts; (2) the rate of fund replenishment following use of the fund for reclamation purposes; (3) how the fund is replenished in a timely manner so as not to delay necessary reclamation; (4) frequency of default; (5) the dollar amounts of the fund available at a given time; and (6) the amount of permittee bond versus fund money used in reclamation. In conjunction with the above, the Director encourages and expects Missouri, pursuant to RSMo 444.830 and 10 CSR 40-7.010(8), to review the program frequently and make any adjustments as necessary to assure adequacy of the fund.

B. Findings on Statutory Amendments—Missouri Surface Coal Mining Law, 444.800—444.970 RSMo 1978 (Cum. Supp. 1982)

1. 444.950—Performance bond for pit reclamation

Missouri has added a new section to its statute to provide that in lieu of the other bonding provisions of the statute, the permit applicant may file a bond conditioned on completion of pit reclamation. The statue specifies that the bond shall not be more than $500 per permitted acre but not less that $10,000 per permit. In addition, liability under the bond continues until the LRC determines that pit reclamation has been completed. In the event of forfeiture, the face amount of the bond shall be available for the completion of pit reclamation. The Director finds that the alternative bond provision, when taken with the provisions discussed below, is consistent with section 509 of SMCRA.

2. 444.960—Establishment of coal mine land reclamation fund

Missouri has added a new section to its statute establishing a coal mine land reclamation fund in the State treasury. Assessments from coal mine operators under 444.965 and any penalties assessed under 444.970 (see discussion below) are to be placed in the fund. Monies from the fund are to be used by the LRC to complete reclamation after any applicable performance bond has been exhausted. The Director finds that this provision is consistent with section 509 of SMCRA.

3. 444.965—Assessments

Missouri has added a new provision requiring each permittee to pay an assessment monthly based on the amount of coal sold, shipped or otherwise disposed of. The assessment shall be paid at the rate of 30 cents per ton for the first 50,000 tons sold in a calendar year, and 20 cents per ton for the next 50,000 tons. The Director finds this provision is consistent with section 509 of the Act.

444.970—Penalties for delinquent payment of assessment

Missouri has added a new provision authorizing the LRC to impose a penalty of 25 cents per ton on any permittee who is more than 30 days delinquent in paying the assessment due. The penalty shall remain in effect until the delinquency is eliminated. This provision also authorizes the LRC to impose a penalty of 25 cents per ton if the permittee becomes substantially delinquent in completing his reclamation plan. The penalty shall remain in force until the delinquency is corrected, and the LRC also may require additional bonding to fully ensure reclamation.

The Director understands that the LRC has the authority to impose these penalties in addition to, rather than in lieu of, ordinary civil penalties under 444.870. Therefore, the Director finds that these penalties are at least as stringent as those in section 518 of SMCRA. See Findings C.4.c. and C.5.b. below for further discussion of this issue.

However, should the penalties for delinquent payment of an assessment be used in lieu of other enforcement measures the Director will require a modification in the program to ensure that such penalties are imposed only in addition to the others.

C. Findings on Regulatory Amendments—Missouri Code of State Regulations (CSR), Title 10, Division 40

1. Revegetation

a. *10 CSR 40-3.120(7)(A)2A—Tree and shrub stocking.* This provision requires that trees or shrubs used for reclamation be in place only one growing season before qualifying to meet the revegetation standard. This requirement is not as effective as 30 CFR 816.116(b)(3)(ii) which requires two growing seasons. The Director is requiring a program amendment to provide for a revegetation standard no less effective than the Federal regulations.

b. *10 CRS 40-3.120(8) (C) and (D) (Surface mining) and 10 CSR 40-3.270(8) (C) and (D) (Underground mining)—Variances from reclamation schedule.* This provision allows the LRC to approve variances from the reclamation timing requirements of 10 CSR 40-3.120(8)(A) if one of three tests is met:

(1) The permittee can demonstrate that unusual circumstances which are beyond his control have made him temporarily unable to conform to the requirements;

(2) The variance requested is for the purpose of improving efficiency of the management of the reclaimed land, and the Director determines that the variance will not unreasonably delay reclamation and the release of phase III liability; or

(3) The variance is requested for the purpose of allowing the permittee to perform reclamation that significantly exceeds the requirements of the law.

The standards for the variances have no direct Federal parallels. Subparagraph (D) treats requests for variances under this rule as the

equivalent of an application for a permit revision that proposes significant alterations in the original permit, subject to the public participation requirements of 10 CSR 40–6.070 and 10 CSR 40–6.080.

At the November 17 meeting, OSM discussed this issue with Missouri. OSM expressed concern that the variances might be too broad to be consistent with SMCRA. Missouri pointed out that the rule is a schedule only for reclamation after backfilling and grading is accomplished under the action-forcing schedule of 10 CSR 40–3.110(1)(A). The preamble to the Federal rules at 30 CFR 816.100 and 816.101 (48 FR 24638, June 1, 1983 and 48 FR 23356, May 24, 1983) indicate that States may develop flexible schedules for contemporaneous reclamation, in keeping with site-specific conditions within the State, as long as the requirements of Section 515(b)(16) of SMCRA are met. The Director therefore finds that the variance provisions are no less effective than the Federal regulations in meeting the requirements of the Act. The Director expects that OSM will monitor these provisions closely during oversight and will take appropriate action to see that they are implemented properly.

c. *10 CSR 40–4.030—Operations on prime farmland.* This provision requires that a vegetative cover of approved perennial species be established following soil replacement, and contains a variance from the requirement for perennial vegetation "if the permittee can provide sufficient evidence that an alternative erosion control practice will be equally effective." The Director finds that this provision is no less effective than 30 CFR 823.15 because the Federal regulation requires only that a vegetative cover be used to stabilize the soil surface and does not specify that perennial vegetation must be used.

2. General Bond Requirements

a. *10 CSR 40–7.011(1) (A) and (B)—Definitions.* The revised Missouri regulations amend the definitions of "surety bond" and "personal bond" to fit the limited role for bonds under the Missouri system. Both kinds of bonds now relate only to "pit reclamation." A surety bond means:

> A joint undertaking by the permittee, as principal, and his surety whereby the principal is obligated to successfully complete pit reclamation according to commission regulations, and the surety is obligated to pay the state of Missouri a sum of money if pit reclamation is not completed or if the permit is revoked prior to completion of pit reclamation.

A personal bond means:

> An undertaking by the permittee to successfully complete pit reclamation according to commission regulations, supported by negotiable certificates of deposit or irrevocable letters of credit which may be drawn upon by the commission if pit reclamation is not completed or if the permit is revoked prior to completion of pit reclamation.

These definitions are not less effective than the corresponding Federal definitions at 30 CFR 800.5

b. *10 CSR 40–7.011(1) (C) and (D)—Definitions.* Pit reclamation is defined as follows:

> Pit reclamation means the filling and grading of the pit area to the requirements of the permit and plan, and includes the replacement of topsoil and initial seeding.

Pit area is defined as follows:

> Pit area means coal preparation areas, coal waste disposal areas, areas from which coal has been removed, and all portions of the permit area for whose reclamation replacement of topsoil is required by the regulations, permit, or plan.

The mining and reclamation plan regulations at 10 CSR 40–6.050(8), governing issuance of permits, require backfilling and grading to approximate original contour and proper control of drainage. Thus, pit reclamation will be essentially equivalent to phase I liability under OSM's regulations.

However, pit reclamation and pit area are defined in such a way as to exclude operator liability for undisturbed areas and possibly for some disturbed areas, such as any roads which will not require replacement of topsoil, and any impoundments which will not be removed. The problem arises because at 10 CSR 40–7.011(2)(A) bond liability of the operator is only established for pit reclamation, and is not specified for any other disturbances to the land.

The Federal rules at 30 CFR 800.11(b)(1) require a bond for the permit area of increment. Bond is required on all affected (disturbed) areas of the permit area, and any alternative program must also establish such protection. Operator liability must also be established on unaffected (undisturbed) areas within the permit area so that any incidental effects of mining that affect these areas become the responsibility of the operator. The Missouri rules at 10 CSR 40–7.021(2)(E) discuss release of liability from undisturbed areas, so OSM interprets the rules to establish such liability. The fund would serve as the bond on the areas outside the pit area.

Therefore, the program amendment is approved because liability and bond requirements are established for all areas to be affected and within the permit area, operator liability is established for unaffected areas within the permit area, and the fund is available for any default in reclamation responsibility.

c. *10 CSR 40–7.011(2)(D)—Bond requirements.* This provision establishes a minimum operator bond of $10,000 per "mine" which can include one or more permit areas. Section 509(a) of SMCRA establishes a minimum of $10,000 for the area under one permit. However, since the Missouri bonding system consists of a combination of the operator's pit bond and the fund reserves, the Director finds that the provision is consistent with the minimum $10,000 per permit area required by the Act.

d. *10 CSR 40–7.011(3)(B)—Certificates of deposit.* This provision allows for collateral bonds secured by certificates of deposit, subject to certain conditions. The Missouri rule at 10 CSR 40–7.011(3)(B)2 states that the certificate shall be made payable to the State of Missouri or the operator and shall be automatically renewable at the end of the term of the certificate.

The Federal rule at 30 CFR 800.21 requires that certificates of deposit be made payable to or assigned to the regulatory authority, both in writing and upon the records of the bank issuing the certificates. In addition, if the certificates are assigned, the Federal rule requires the bank issuing the certificates to waive all rights of setoff or liens against those certificates. At the November 17 meeting, OSM discussed this issue with Missouri. Missouri explained that under its rules, certificates of deposit must be made payable to the State of Missouri as well as the operator, but that the State takes physical possession of the certificate until bond release. Because only the holder may present the certificate for payment, Missouri contended that assignment on the books of the bank is not necessary. Based on this explanation, the Director finds that the phrase "payable to the State of Missouri or the operator" shall be interpreted to mean "as well as the operator" and therefore is no less effective than the Federal rule. However, the Missouri rule does not contain the requirement for the bank to waive rights of setoff or liens and therefore is not as effective as 30 CFR 800.21(a)(3). This requirement is necessary to guarantee that the amount of the bond will cover pit reclamation to the maximum extent possible with the face amount of the bond. The Director is requiring a program amendment to include the waiver provisions for setoff or liens identified above.

e. *10 CSR 40–7.011(3)(C)—Letters of credit.* This provision states that letters of credit shall be issued by a bank or

trust company "located in" the United States rather than "organized or authorized to do business in the United States" as required by 30 CFR 800.21(b)(1). If a bank is located in the United States, the Director presumes that it is at least authorized to do business in the State in which it is located.

Therefore, this provision is no less effective than the Federal requirement. At the November 17 meeting, Missouri confirmed this presumption, explaining that the phrase was used to prevent the LRC from accepting a letter of credit from any bank physically located outside the United States, even if authorized by the government to do business there. The purpose is to ensure that bank assets are available in the United States for attachment if payment is refused after a forfeiture and the State if forced to litigate. The State assumes that no bank can be "located in" the United States without being duly authorized by some State of the United States.

f. *10 CSR 40-7.011—Bank insolvency.* The Missouri rules do not contain any requirement comparable to 30 CFR 800.16(e), regarding notification to the regulatory authority and the permittee of the insolvency or bankruptcy of the bank issuing letters of credit or holding certificates of deposit, and the subsequent chain of required events. The Missouri rules do contain such provisions for surety companies. Therefore, the Director is requiring a program amendment to provide for notification and action on bank insolvency.

g. *10 CSR 40-7.011—Collateral bonds.* The Missouri rules do not contain a provision comparable to 30 CFR 800.21(a)(2), which requires the regulatory authority to value collateral at its current market value, rather than at face value. Such a provision is necessary to ensure that the maturity date and liquidity are considered in setting the value of the collateral. Missouri explained that it will only accept as collateral letters of credit and certificates of deposit less than $100,000 per document and per bank, which means the State's interest in the collateral is insured by the Federal Deposit Insurance Corporation.

Further, because they are not subject to market fluctuations, the certificates of deposit or letters of credit will always be worth the face amount of the bond. Therefore, Missouri stated that it does not need a provision comparable to 30 CFR 800.21(a)(2). The Director agrees with the Missouri explanation and therefore finds that the Missouri provision is no less effective than the Federal regulation.

3. Duration and Release of Liability

a. *10 CSR 40-7.021(1)—Duration of liability.* This provision sets forth the period of liability applicable to a permit and specifies that it shall continue until all reclamation, restoration and abatement work required of the permittee under the regulatory program, permit and reclamation plan has been completed and the permittee has been released from liability in accordance with the procedures contained elsewhere in the rules. The rule also provides that the minimum period of phase III liability shall continue for not less than five years and shall begin again whenever augmented seeding, fertilization, irrigation or other work is required or authorized on the site. This provision is no less effective than 30 CFR 800.13(a) which specifies that liability shall be for the duration of the operation and for a period coincident with the operator's period of extended liability or until achievement of the reclamation requirements of the Act, regulatory program and permit, whichever is later.

In subparagraph (1) (B)(4), there is a provision allowing separation from the original area, for liability release purposes, of portions of the permit area requiring augmentation, upon approval of the Commission or Director.

The Federal rule at 30 CFR 800.13(b) provides that isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area with the approval of the regulatory authority, provided that such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Under the Missouri system, by the time phase III liability release is being considered, there is no operator bond and liability is on the fund. The Director presumes that the LRC and the Director will use their discretion wisely to approve such liability separations in a manner consistent with the Federal rule to minimize liability to the fund. Therefore, the Director finds this provision to be no less effective than the Federal rule.

b. *10 CSR 40-7.021(2) (A), (B) and (C)—Phase I and II liability releases.* Missouri's rule at 10 CSR 40-7.021(2)(A) allows release of phase I liability on certain areas for which phase I reclamation has not been completed. These areas include roads, sediment ponds, diversions and small stockpiles of soil and overburden associated with such areas.

This rule is inconsistent with the intent and purpose of sections 509 and 519 of the Act. Bond and operator liability are established to ensure completion of reclamation. To allow release of such bond and/or liability before reclamation or the appropriate phase of reclamation is complete defeats the purpose of the establishment of bond and/or liability.

Subparagraph (B) sets forth the standards for phase II liability release, including establishment of a permanent vegetative cover sufficient to control erosion, tree and shrub stocking requirements for woodland and wildlife areas, and a requirement that the lands not be contributing suspended solids to streamflow or runoff outside the permit area in excess of applicable requirements. This provision is no less effective than 30 CFR 800.40(c)(2) which specifies the phase II standards under the Federal rules.

Subparagraph (C) allows a phase II liability release on sediment ponds or diversions even though not removed and reclaimed, if:

(1) The postmining land use of the sediment ponds or diversions is not woodland or wildlife habitat;

(2) All of the drainage area serviced by the sediment ponds or diversions has received a phase II liability release, or it qualifies for release of phase II liability and is included in a request for release of phase II, liability; and

(3) Such a release of phase II liability will significantly facilitate demonstration of revegetation success by allowing vegetative measurements on the areas of the sediment ponds or diversions to be made in conjunction with vegetative measurements on adjacent areas.

This exception, similar to the phase I exceptions for roads, ponds and diversions, allows the structures to be exempt from reclamation criteria through the time of two complete phases of liability, even though they must be reclaimed eventually. This rule is not consistent with section 509 of SMCRA.

OSM discussed this issue with Missouri at the November 17, meeting. Missouri stated that although OSM is accurate that certain features will be released from phase I and phase II liability without actually being reclaimed, they are *de minimus* features on the mining landscape. As a result, it is administratively burdensome to keep track of them and even more burdensome to identify where they are on the landscape after they are partly reclaimed and the surrounding areas are farther along in the five-year reclamation responsibility period.

Missouri pointed out that the phase II exemption does not apply to roads, which must be reclaimed to the point of stabilization by vegetation before qualifying for phase II release. Missouri stated that although exempting ponds from phase I and II release criteria will slightly increase the risk of the fund, the risk is *de minimus*. Missouri also noted that if an operator defaulted only by leaving ponds and diversions, the fund would not be severely reduced. Moreover, an operator who is able to reclaim the larger mine area will not default only on ponds because a default would bar him from future Missouri permits. Finally, Missouri urged OSM to consider that final (phase III) release will not occur until entire units of the landscape to are reclaimed to phase III standards. However, as Missouri conceded, the result of the Missouri rule is that an entire permit area may be phase III-released after five years of revegetation responsibility on the larger areas, even though reclaimed pond, diversion and road areas are or may be two or three years behind the larger areas in vegetation maturity and therefore short of the required five-year period.

The Federal rules on reclamation of roads and siltation structures (30 CFR 816.150, 48 FR 22110, May 16, 1983, and 30 CFR 816.46, 48 FR 44032, September 26, 1983) require reclamation according to 30 CFR 816.111–.116. Section 816.116(c)(1) (48 FR 40140, September 2, 1983) requires revegetation of regraded and other disturbed areas to certain standards and requires the statutory responsibility period to begin "after the last year of augmented seeding, fertilizing, irrigation or other work." There are no exceptions for small areas. The preamble to the rule (48 FR 40156) states that "OSM is constrained by Section 515(b)(20) of the Act to require the responsibility period to restart if augmented planting occurs." Thus, it would be inconsistent with the Act to allow areas as discrete as sediment ponds and roads to be considered part of larger areas for purposes of the liability period although the initial seeding, fertilization and irrigation of those areas will be delayed as much as three years. The Federal rules do not allow the use of augmented seeding, fertilization, irrigation or other work is not allowed during the responsibility period without causing it to be restarted. Therefore, the Director finds that the Missouri rules are less effective than the Federal regulations and is requiring a program amendment to delete these phase I and II exemptions from Missouri's rules.

c. *10 CSR 40-7.021(2)(D)—Phase III liability release.* The criteria for phase III liability release are equivalent to the phase III bond release criteria and OSM's regulations. Thus, the Missouri system ultimately arrives at the same point as a traditional bonding system under the Federal regulations except as noted in Finding 3.b. above.

d. *10 CSR 40-7.021 (3) and (4)—Procedures for liability release.* Subparagraph (3) provides procedures for liability release that are similar to the bond release procedures of 30 CFR 800.40(a), with one difference. Subparagraph (3)(A) would allow the operator to apply for release of portions of the permit area at the operator's discretion and does not restrict bond release requests to entire permit areas or predefined increments. The Federal rules at 30 CFR 800.40(c) contemplate releases only on the permit area (as a whole) or on an entire incremental area. OSM discussed this issue with Missouri at the November 17 meeting. Missouri stated that OSM's concern that operators will apply for releases on a piecemeal basis will not materialize as the LRC will not look kindly on operators trying to inundate it with frequent release requests for small units and because, in practice, operators reclaim large units on common schedules because it is more cost-effective to do so. Based on this explanation, the Director finds that the Missouri rule is no less effective than the Federal regulation. The Director expects that OSM will monitor this area closely during oversight.

Subparagraph (4) sets forth procedures for written objections, inspection, review, decision and public hearings on liability release. These provisions are consistent with 30 CFR 800.40(b)–(h), which specify the Federal requirements for these aspects of bond release proceedings.

4. Permit Revocation, Bond Forfeiture, and Administration of the Coal Mine Land Reclamation Fund

a. *10 CSR 40-7.031 (1) and (2)—Procedures for permit revocation.* Missouri has amended 10 CSR 40-8.030(8) to provide that permits shall be revoked as stated in 10 CSR 40-7.031. The section essentially combines the permit revocation provisions of section 521(a)(4) of SMCRA and section 444.885 of the Missouri statute, and the bond forfeiture provisions of section 509(a) of SMCRA and section 444.830 of the Missouri statute. Because the operator's bond may be released after phase I reclamation, this section focuses on permit revocation as an enforcement mechanism rather than bond forfeiture because permit revocation triggers both bond forfeiture and authorization for the Commission to ultilize reclamation fund money to complete the reclamation plan, 10 CSR 40-7.031(4). The Federal rules specify only one basis for permit revocation—the determination that a pattern of violations exists and that such violations are the result of the permittee's unwarranted failure to comply with permit conditions or requirements or are caused willfully by the permittee. This section of the Missouri rules provides six bases or criteria under which a permit shall be subject to revocation, including the pattern of violations criterion. Therefore, as permit revocation procedures, the Missouri rules are more comprehensive than the Federal requirements.

One of the criteria for permit revocation is if the permittee has failed to abate a notice of delinquent reclamation (See Finding C.5.b. below) within the time established. Under subparagraph (2)(A) of this rule, the LRC, as an alternative to permit revocation, in the case of failure to abate a notice of delinquent reclamation, may extend the abatement period for up to a full year from the abatement date established pursuant to 10 CSR 40-8.030(18) (B) or (C). The extension is allowed only where it is found that the failure to abate is not due to a lack of diligence by the permittee and requires the permittee to submit a bond for the additional liability the extension represents to the coal mine land reclamation fund, in an amount which is 125% of the amount the Commission finds would be needed to complete the reclamation plan on the area to which the extension applies. However, subparagraph (2)(D) allows another 2½ months delay for determination of the bond amount and actual receipt of the bond after the extension is granted. The Missouri rule presupposes a situation where there has been a notice of delinquent reclamation for failure to reclaim in a timely manner followed by a failure to abate the notice of delinquent reclamation. Thus, this rule would allow up to a year of additional time to meet the reclamation schedules established by law, prior to revocation of a permit.

However, the Federal rule at 30 CFR 800.50 allows the regulatory authority, in lieu of bond forfeiture, to reach an agreement with the permittee or another party to perform reclamation operations in accordance with a compliance schedule. Also, the Director is requiring changes to Missouri's enforcement provisions to require sanctions no less

stringent than those required by SMCRA. (See Finding C.5.b. below). Therefore, the Director finds that the permit revocation criteria of 10 CSR 40-7.031(1) in cases of failure to abate a notice of delinquent reclamation are consistent with SMCRA and the Federal regulations.

Paragraph (2) of 10 CSR 40-7.031 sets forth the procedures to be followed for permit revocation. The rule provides that if the LRC Director determines that a permit should be revoked (based on the criteria in paragraph (1)), he shall file with the Commission a complaint for revocation. The Commission must act on the complaint within 45 days by rejecting or accepting the complaint, or alternatively entering into a consent order with the permittee, or if the cause of the complaint is a failure to abate a notice of delinquent reclamation, extending the abatement period. It is not clear how the Commission shall act on the complaint. Furthermore, the Federal rules do not allow for a complaint to be "rejected" once the determination has been made that a permit should be subject to revocation. In order for this procedure to be acceptable, Missouri must clarify the procedures that will be followed by specifying whether the opportunity for an adjudicatory hearing will be afforded and whether the Commission will make written findings of fact and conclusions of law to support its decision to revoke or not revoke the permit. Accordingly, the Director is requiring a program amendment to specify satisfactorily the procedures to be used to act on a complaint for permit revocation.

b. *10 CSR 40-7.031(3)—Bond forfeiture.* This provision allows the LRC Director to enter into an agreement with the surety, issuer of letter of credit, or former permittee to allow such person to complete pit reclamation in lieu of bond forfeiture where the Director determines that the surety, issuer of a letter of credit, or former permittee desires to and is capable of completing pit reclamation. In the event forfeiture is required, the Director shall take action to collect the forfeited bond and any instruments securing the bond. The provision is similar to and no less effective than 30 CFR 800.50.

c. *10 CSR 40-7.041(3)(B)—Penalties for delinquent payment of fees to the reclamation fund.* This provision requires each permittee to pay the required assessment within 45 days after the month for which the assessment is applicable or else the permittee shall be considered delinquent. Such a violation must lead to sanctions and penalties no less stringent than those in sections 518 and 521 of SMCRA.

Subparagraph (A) requires the Director to issue a notice of violation (NOV) to a delinquent permittee with a non-extendable abatement date of 10 days. However, subparagraph (B) requires a penalty of 25 cents per ton on coal disposed of during the month for which payments are delinquent in lieu of ordinary civil penalties under 10 CSR 40-8.040. Although they could be significant, these penalties are potentially much smaller than the penalties possible under 10 CSR 40-8.040. In addition, it is not expressly stated that a cessation order will issue on the eleventh day after the NOV is issued if payment is not received.

This provision is not consistent with sections 518 and 521 of the Act and 30 CFR Part 845. Section 518(i) requires that the penalty provisions of a State program be no less stringent than those set forth in section 518. However, if the penalty authorized by 10 CSR 40-7.041(3)(B) is assessed in addition to, rather than in place of, the civil penalties under 10 CSR 40-8.040, such a penalty would provide an additional economic incentive to ensure prompt payment of fees to the fund. Similarly, section 521(d) of SMCRA requires that the enforcement provisions of a State incorporate sanctions no less stringent than those set forth in section 521. Accordingly, the Director is requiring a program amendment to provide that the 25 cents per ton penalty may be assessed in addition to, but not in lieu of, the civil penalty provisions of 10 CSR 40-8.040. Furthermore, Missouri must amend its rules to mandate the issuance of a cessation order if the violation (delinquent payment) is not abated within the time set.

5. Inspection and Enforcement

a. *10 CSR 40-8.030(6)(B)2—Enforcement of cessation orders.* This provision has been amended to require issuance of a cessation order (CO) if a permittee fails to abate a notice of delinquent reclamation (see Finding C.5.b. below) within the period established for abatement and the LRC Director determines that a cessation of operations is necessary to prevent a further increase in liability to the fund.

This rule treats CO's for failure to abate a notice of delinquent reclamation differently from CO's for failure to abate other violations by adding the extra requirement that the Director determine it is necessary to prevent an increase in liability to the fund. Since the status of being delinquent in reclamation is a violation, failure to abate that violation should lead to a cessation order and the penalties prescribed by SMCRA. Therefore, this provision is not consistent with section 521 of SMCRA. The Director is requiring a program amendment to provide the same standards for issuance of a cessation order for failure to abate a notice of delinquent reclamation as for failure to abate other violations.

b. *10 CSR 40-8.030(18)—Delinquency in reclamation.* Subparagraph (A) of this provision requires the LRC Director, in lieu of a normal notice of violation under 10 CSR 40-8.030(7), to issue a notice of delinquent reclamation (NDR) when he determines that a permittee has failed to complete reclamation within the time limits specified in 10 CSR 40-3.120(8) or 3.270(8). Thus, a NDR is a special kind of notice of violation. To be acceptable, this notice of violation must lead to sanctions no less stringent than the requirements of sections 518 and 521 of SMCRA, and must have the same or similar procedural requirements. See sections 518(i) and 521(d).

Subparagraph (C) of this rule allows the Commission or Director to extend the time for abatement if the permittee shows that failure to meet the deadline was caused by "circumstances beyond the control of the permittee and not lack of diligence on the part of the permittee or its agents or employees." This is much broader than the standards for exceptions to the 90-day abatement rule in 30 CFR 843.12 (c) and (f)-(j) and contains none of the restrictions designed to prevent abuse. The rule provides for a possible extension of one year without any standards at all; an additional six-month extension for failure to abate violations dealing with topsoil replacement, erosion control, sediment ponds and diversions; and up to a one-year extension for delay in meeting either phase II or phase III reclamation time schedules. The only additional requirement is that where the NDR is for failure to comply with the topsoil, erosion control, pond and diversion standards, the Director must file monthly status reports with the Commission. This is not consistent with 30 CFR 843.12, which allows extensions of only 90 days based on certain limited criteria. Therefore, the Director is requiring a program amendment to provide standards for extensions of the 90-day abatement period consistent with 30 CFR 843.12.

Subparagraph (E) allows a person issued an NDR, or any person with an interest adversely affected by it, to request a formal hearing before the Commission within 30 days after receiving notice of action. This hearing need not be held for 4 months after the

request unless the application specifically requests that it be held within 30 days. The Commission has 45 days after the hearing to make a decision. During the proceedings, the notice or any modification, termination or vacation thereof shall not be stayed. The rule is silent on whether this hearing is a contested case under the Missouri Administrative Procedures Act, and whether it is subject to 10 CSR 40-8.030(10) and (14)-(16), which govern procedures for formal reviews of NOV's and CO's. OSM discussed this issue with Missouri at the November 17 meeting. Missouri stated that the hearing is a contested case under the Missouri Administrative Procedures Act which is already included in the Missouri program, and that the APA applies whether or not it is explicitly stated in a rule. The Director agrees with this explanation and finds that the hearing procedure is similar to the procedures in 30 CFR 843.16, and thus acceptable under the requirements of sections 521(d) and 525 of SMCRA.

Subparagraph (G) repeats the statutory provision that a penalty of 25 cents per ton of coal sold, shipped, or otherwise disposed of during the delinquency period "may" be imposed, but only if the Director determines that the delinquency was caused by a lack of diligence by the permittee. Even if a penalty is imposed, the rule states that the delinquency period shall end when the remedial action is completed or when the time set for abatement of the delinquent reclamation expires, whichever comes first. The second possibility could mean that the delinquency would be deemed ended if abatement is not completed. Also, the rule implies that the only civil penalty possible for an NDR is the 25 cents per ton maximum. Since these penalties depend on the amount of coal mined during a delinquency period, they are potentially far smaller than the maximum $5,000 per day civil penalty possible for other notices of violation. The only additional burden placed on the delinquent permittee is in paragraph (H), which states that the Commission "may" require a permittee having an NDR to submit additional bonding in an amount sufficient to cover the extra liability to the fund represented by the delinquency, with the bond to remain in effect for a minimum of 1 year. There are no standards for computing this bond, no procedures governing its release, and no procedures for public participation.

Therefore, the Director finds that 10 CSR 40-8.030(18), except for subparagraph (E), violates the standard of section 521(d) of SMCRA which states—

> As a condition of approval of any State program * * * the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section and shall contain the same or similar procedural requirements relating thereto.

Although the procedural requirements of 10 CSR 40-8.030(18) are superficially similar to those of section 521(a) of SMCRA, the sanctions available for an operator who is delinquent in reclamation are potentially much weaker because of the generous extensions of time possible for an NDR and the improbability that an operator will be forced to stop mining coal while the delinquency is corrected.

The Missouri rule also violates the standards of section 518(i) of SMCRA which states—

> As a condition of approval of any State program * * * the civil and criminal penalty provisions thereof shall, at a minimum, imcorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.

The civil penalty provisions of section 518 are almost completely avoided by the Missouri regulations in the case of operators delinquent in reclamation. Accordingly, the Director is requiring a program amendment to Missouri rule 10 CSR 40-8.030(18) to add express language clarifying that the penalty of 25 cents per ton may be imposed only in addition to, but not in place of, the approved civil penalty provisions of 10 CSR 40-8.040.

III. Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, acknowledgments were received from the Environmental Protection Agency and the Soil Conservation Service. The comments were limited and did not identify any deficiencies in the proposed program amendments.

IV. Director's Decision

The Director, based on the above findings, is approving the Missouri statute and performance bond regulations submitted as an amendment to the approved Missouri program under the provisions of 30 CFR 732.17. As indicated above, there are a number of provisions which are inconsistent with SMCRA and the Federal regulations. By separate letter, the Director has notified Missouri, pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The State must reply within 60 days after notification by submitting either the text of a proposed amendment or a description of an amendment to be proposed and a timetable for enactment which is consistent with established administrative procedures in the State.

The Federal rules at 30 CFR Part 925 are being amended to implement this decision. Also, Part 925 is being reorganized to reflect all final actions pertaining to State program amendments submitted by Missouri. This reorganization should afford the reader a clearer indication of the approval of amendments to the Missouri program.

Upon receipt of the State's response to the Director's notification, Part 925 will be amended further to establish the dates by which Missouri will submit the required program amendments.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 925 is amended as set forth herein.

Dated: May 3, 1984.

J. Lisle Reed,

Director, Office of Surface Mining.

PART 925—MISSOURI

1. 30 CFR 925.10 is amended by revising paragraph (a) to read:

§ 925.10 State program approval.

(a) The Missouri State program submitted on February 1, 1980, and as amended and clarified on May 14, 1980, was conditionally approved effective November 21, 1980. Copies of the approved program, as amended, are available for review at:

(1) Missouri Land Reclamation Commission, 1026-D Northeast Drive, Jefferson City, Missouri 65101.

(2) Office of Surface Mining, Kansas City Field Office, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

(3) Office of Surface Mining, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

* * * * *

2. 30 CFR 925.15 is amended by adding a new paragraph (c) as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(c) The following amendments were approved effective May 8, 1984.

(1) Revisions to the Missouri statute submitted April 13, 1983, contained in Senate Bill 737, enacted April 7, 1982, repealing sections 444.805 and 444.830, and adding sections 444.805, 444.830, 444.950, 444.955, 444.960, 444.965 and 444.970.

(2) Missouri revised regulations submitted April 13, 1983, adopted April 11, 1983, amending 10 CSR 40-3.120, 40-3.270, 40-4.030, and 40-8.030; rescinding 40-7.010, 40-7.020, 40-7.030, and 40-7.040; and adding 40-7.011, 40-7.021, 40-7.031, 40-7.041 and 40-7.050; with the exception of those provisions identified in section 925.16 which require further amendment.

3. Part 925 is amended by adding a new § 925.16 as follows:

§ 925.16 Required program amendments.

Pursuant to 30 CFR 732.17, Missouri is required to make the following program amendments:

(a) Amend its program at 10 CSR 40-3.120(7)(A)2A, consistent with 30 CFR 816.116(b)(3)(ii), to require two growing seasons before qualifying to meet the revegetation standard for trees and shrubs.

(b) Amend its program at 10 CSR 40-7.011(3)(B)(2), consistent with 30 CFR 800.21, to require that the bank issuing the certificates must waive all rights of setoff or liens against those certificates.

(c) Amend its program at 10 CSR 40-7.011(3)(B) and 40-7.011(3)(C), consistent with 30 CFR 800.16(e), to require notification to the regulatory authority and the permittee of the insolvency or bankruptcy of the bank issuing letters of credit or holding certificates of deposit, and to initiate the subsequent chain of required events.

(d) Amend its program to delete the provisions at 10 CSR 40-7.021(2)(A) and 10 CSR 40-7.021(2)(C) allowing release of liability on certain areas where phase I or II reclamation has not been completed.

(e) Amend its program at 10 CSR 40-7.031(2), consistent with 30 CFR 843.13, to specify the procedures used to act on a complaint for permit revocation.

(f) Amend its program to: (1) Specify that the 25 cents per ton penalty in 10 CSR 40-7.041(3)(B) may be assessed in addition to, but not in lieu of, the civil penalty provisions of 10 CSR 40-8.040, and (2) mandate the issuance of a cessation order if the violation (delinquent payment) is not abated within the time set.

(g) Amend its program at 10 CSR 40-8.030(6)(B)2 to require the same standards for issuance of cessation orders for failure to abate a notice of delinquent reclamation as for failure to abate other violations.

(h) Amend its program at 10 CSR 40-8.030(18) to provide: (1) Standards for extension of the 90-day abatement period for notices of delinquent reclamation consistent with 30 CFR 843.12; and (2) express language clarifying that the penalty of 25 cents per ton may be imposed only in addition to, but not in place of, the approved civil penalty provisions of 10 CSR 40-8.040.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

[FR Doc. 84-12339 Filed 5-7-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 936

Oklahoma Permanent State Regulatory Program—Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a date contained in final regulations substituting direct Federal enforcement of certain portions of Oklahoma's Permanent Regulatory Program which were published April 12, 1984 (49 FR 14674).

EFFECTIVE DATE: April 30, 1984.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Special Assistant to the Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-4225.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: May 1, 1984.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection.

PART 936—[AMENDED]

Accordingly, the Office of Surface Mining is correcting 30 CFR 936.18(d)(2) (49 FR 14689) by revising it to read as follows:

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§ 936.18 Remedial actions.

(d) * * *

(2) Reevaluating bond release actions since July 20, 1981;

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[FR Doc. 84-12248 Filed 5-7-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 946

Virginia Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 946 to remove a condition of approval imposed by the Secretary of the Interior on the Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition being removed concerns the authority of the State to deny an application for a permit unless the permit applicant submits proofs that all required Federal reclamation fees have been paid.

After providing opportunity for public comment and conducting a thorough review of the program amendment submitted by Virginia on February 10, 1984, to satisfy the condition, the Secretary, in accordance with 30 CFR 732.17, has decided to remove the condition of approval.

EFFECTIVE DATE: May 8, 1984.

FOR FURTHER INFORMATION CONTACT:

Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining, P.O.