

of the December 2020 Order will likely withstand judicial review. I am surprised, however, to see the majority's seeming vitriol over what amounts to a judgment call.

For these reasons, I respectfully concur in part and dissent in part.

James P. Danly,  
Commissioner.

## Department of Energy

### Federal Energy Regulatory Commission

#### Five-Year Review of the Oil Pipeline Index

Docket No. RM20–14–001

(Issued January 20, 2022)

CHRISTIE, Commissioner, Concurring in Part and Dissenting in Part

1. I concur with most of today's order,<sup>1</sup> most significantly the restoration of the use of the middle 50% of the data set for determining the index. As today's order notes, the December 2020 Order's move to the middle 80% was an unjustified departure from the Commission's settled practice of relying on the middle 50%.<sup>2</sup> Because the 50% range represents the established practice over the past decade, restoring it is more consistent with the principle of regulatory certainty than the December 2020 Order's reliance on the 80% range without sufficient justification.

2. Consistent with this principle of regulatory certainty, however, I dissent from the portion of today's order that reverses the determination in the December 2020 order declining to incorporate the effects of the Income Tax Policy Change into the 2020 index calculation. In what it described as "an issue of first impression," the Commission, in that order, adopted a proposal submitted by Designated Carriers in response to a previously issued NOPR.<sup>3</sup> The December 2020 Order explained the Commission's reasoning.<sup>4</sup>

3. The Income Tax Policy Change presented a unique factual circumstance that had yet to be considered by the Commission's indexing policies. It thus constitutes a "one-off." It fell to a differently constituted Commission to determine whether, and if so how, the index calculation must be adjusted to address the Income Tax Policy Change. That Commission made its decision. I was not on the Commission in

December 2020. If I had been, I may have voted for a different treatment of the tax issue, but unlike the change of the data set range—which disturbed without adequate justification an established practice—this unique tax issue was one in which there were valid arguments on both sides. What I or other members of this Commission *might* have done, however, if we had been given the opportunity in 2020, matters much less than what the Commission sitting in December 2020 actually *did* do: Namely, consider the pros and cons of an issue and make a decision based on the arguments and evidence in the record. Accordingly, I believe that the principle of regulatory certainty argues for leaving that "one-off" decision on the tax issue alone.

For these reasons, I respectfully concur in part and dissent in part.

Mark C. Christie,  
Commissioner.

[FR Doc. 2022–01544 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 925

[SATS No. MO–048–FOR; Docket ID: OSM–2019–0001; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

#### Missouri Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As a result of Missouri's Red Tape Reduction Initiative (Executive Order 17–03), Missouri proposes amendments and rescissions to its Missouri Coal Mining Regulations in order to reduce the volume of these regulations without reducing the program's requirements. Missouri proposed amendments to multiple sections of its regulations to incorporate by reference the corresponding Federal regulations. Missouri also proposed to rescind multiple sections of its regulations that will be incorporated by reference in the

aforementioned proposed amended sections. Missouri intends these revisions to its program to remain as effective as the Federal regulations.

**DATES:** The effective date is February 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Bill Joseph, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002. Telephone: (618) 463–6463 extension 5109. Email: [bjoseph@osmre.gov](mailto:bjoseph@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. Statutory and Executive Order Reviews

#### I. Background on the Missouri Program

Subject to OSMRE's oversight, Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7).

Based on these criteria, the Secretary of the Interior conditionally approved the Missouri program effective November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Missouri program in the November 21, 1980, **Federal Register** (45 FR 77027). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15 and 925.16.

#### II. Submission of the Amendment

By letter dated February 8, 2019 (Administrative Record No. MO–684), Missouri sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative.

We announced the receipt of the proposed amendment in the May 1, 2019, **Federal Register** (84 FR 18433). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. We did not receive any public comments on the proposed

<sup>1</sup> *Five-Year Review of the Oil Pipeline Index*, 178 FERC ¶ 61,023 (2022) (Order).

<sup>2</sup> *Id.* P 37 & n.9.

<sup>3</sup> December 2020 Order, 173 FERC ¶ 61,245 at P 16.

<sup>4</sup> *Id.* PP 16–20.

amendment. The public comment period ended on May 31, 2019.

### III. OSMRE's Findings

We are approving the amendment as described below. The following are findings we made concerning Missouri's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at [www.regulations.gov](http://www.regulations.gov).

Missouri proposes to amend the following sections of the Missouri Coal Mining Regulations to incorporate by reference to corresponding Federal regulations:

*10 CSR 40–3.060—Requirements for the Disposal of Excess Soil*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 780.35.

*10 CSR 40–3.170—Signs and Markers for Underground Operations*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR part 817, with the exception of 30 CFR 817.10, Information Collection, and a modification to section 817.61(c)(1). As required by 30 CFR 817.61(c)(1) after approval of a state blasting certification program, Missouri will require all blasting operations to be conducted under the direction of a certified blaster. This modification does not make the Missouri regulation less effective than the corresponding federal regulation.

*10 CSR 40–4.020—Auger Mining Requirements*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.20.

*10 CSR 40–4.040—Operations on Steep Slopes*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.15.

*10 CSR 40–4.060—Concurrent Surface and Underground Mining*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.18.

*10 CSR 40–4.070—In Situ Processing*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.22.

*10 CSR 40–6.100—Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR parts 783 and 784.

We find that Missouri's proposed amendments to these sections do not make its rules or regulations less effective than the corresponding Federal regulations, as the Federal regulations are being incorporated by reference. The proposed modifications were found not to compromise the effectiveness of the incorporated Federal regulations; therefore, we are approving Missouri's revisions.

Missouri also proposes to rescind the following sections of the Missouri Coal Mining Regulations as they have been incorporated in the aforementioned proposed amended sections:

*10 CSR 40–3.180—Casing and Sealing of Exposed Underground Openings*

*10 CSR 40–3.190—Requirements for Topsoil Removal, Storage and Redistribution for Underground Operations*

*10 CSR 40–3.200—Requirements for the Protection of the Hydrologic Balance for Underground Operations*

*10 CSR 40–3.210—Requirements for the Use of Explosions for Underground Operations*

*10 CSR 40–3.220—Disposal of Underground Development Waste and Excess Spoil*

*10 CSR 40–3.230—Requirements for the Disposal of Coal Processing Waste for Underground Operations*

*10 CSR 40–3.240—Air Resource Protection for Underground Operations*

*10 CSR 40–3.250—Requirements for the Protection of Fish, Wildlife and Related Environmental Values and Protection of Fish, Wildlife and Related Environmental Values and Protection Against Slides and Other Damage*

*10 CSR 40–3.260—Requirements for Backfilling and Grading for Underground Operations*

*10 CSR 40–3.270—Revegetation Requirements for Underground Operations*

*10 CSR 40–3.280—Requirements for Subsidence Control Associated With Underground Mining Operations*

*10 CSR 40–3.290—Requirements for Road and Other Transportation Associated With Underground Operations*

*10 CSR 40–3.300—Postmining Land Use Requirements for Underground Operations*

*10 CSR 40–3.310—Coal Recovery, Land Reclamation and Cessation of*

*Operation for Underground Operations*

*10 CSR 40–6.110—Underground Mining Permit Applications Minimum Requirements for Information on Environmental Resources*

*10 CSR 40–6.120—Underground Mining Permit Applications Minimum Requirements for Reclamation and Operations Plan*

We find that Missouri's proposal to rescind these sections do not make its rules or regulations less effective than the corresponding Federal regulations, as the Federal regulations are being incorporated by reference in the aforementioned proposed amended sections. Therefore, we are approving Missouri's rescissions.

### IV. Summary and Disposition of Comments

#### Public Comments

We asked for public comments on the amendment. As noted in Section II, we did not receive any public comments on this proposed amendment.

#### Federal Agency Comments

On February 14, 2019, pursuant to 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO–684–02). We did not receive any comments.

#### U.S. Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards; therefore, we did not ask EPA to concur on the amendment. However, on February 14, 2019, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. MO–684–02). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 14, 2019, we requested comments on the amendment

(Administrative Record No. MO-684-02). We did not receive any comments.

#### V. OSMRE's Decision

Based on the above finding, we are approving the Missouri amendment that was submitted on February 8, 2019 (Administrative Record No. MO-684). To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program must demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

#### VI. Statutory and Executive Order Reviews

##### *Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights*

This rule does not affect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

##### *Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments are exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the

agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program amendment that the State of Missouri drafted.

##### *Executive Order 13132—Federalism*

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to "grant the States the maximum administrative discretion possible" with respect to Federal statutes and regulations administered by the States. Missouri, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Missouri program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and we have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the State program and does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

##### *Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

##### *Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

##### *National Environmental Policy Act*

Consistent with Sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical, (OMB Circular A-119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

##### *Paperwork Reduction Act*

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

*Regulatory Flexibility Act*

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's submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in

costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information

required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

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

Intergovernmental relations, Surface mining, Underground mining.

**Alfred L. Clayborne,**

*Regional Director, DOI Unified Region 3, 4 and 6.*

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

**PART 925—MISSOURI**

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

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

■ 2. In § 925.15 amend the table by adding an entry for “February 8, 2019” in chronological order by “Date of final publication” to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* February 8, 2019 .....	* January 28, 2022 .....	* 10 CSR 40–3.060; 40–3.170; 40–3.180; 40–3.190; 40–3.200; 40–3.210; 40–3.220; 40–3.230; 40–3.240; 40–3.250; 40–3.260; 40–3.270; 40–3.280; 40–3.290; 40–3.300; 40–3.310; 40–4.020; 40–4.040; 40–4.060; 40–4.070; 40–6.100; 40–6.110; 40–6.120.

[FR Doc. 2022–01667 Filed 1–27–22; 8:45 am]  
BILLING CODE 4310–05–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R05–OAR–2021–0451; FRL–9166–02–R5]

**Air Plan Approval; Michigan; Finding of Failure To Attain the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard for the Detroit Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that the Detroit sulfur dioxide (SO<sub>2</sub>) nonattainment area failed to attain the 2010 primary 1-hour SO<sub>2</sub> national ambient air quality standard (NAAQS or “standard”) by the applicable attainment date of October 4, 2018. This determination is based upon air quality modeling using actual and allowable

emissions. This action requires the State of Michigan to submit one year after date of publication in the **Federal Register** a revision to its State Implementation Plan (SIP) that, among other elements, provides for expeditious attainment of the 2010 SO<sub>2</sub> standard. EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin area that was included in the notice of proposed rulemaking (NPRM), as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

**DATES:** This final rule is effective on February 28, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0451. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Abigail Teener, Environmental Engineer, at (312) 353–7314 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, [teener.abigail@epa.gov](mailto:teener.abigail@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

On October 27, 2021 (86 FR 59327), EPA proposed to determine that the