

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

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

2. Section 914.15 is amended by adding paragraph (qqq) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(qqq) The revised provisions at 310 IAC 12-3-87.1(c)(2) and 310 IAC 12-5-130.1(c)(2) and the repeal of 310 IAC 12-5-132 contained in Indiana's program amendment concerning subsidence, as originally submitted by Indiana on March 18, 1994, and for which the decisions were deferred on April 20, 1995, are approved effective May 28, 1996.

[FR Doc. 96-13264 Filed 5-24-96; 8:45 am]

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30 CFR Part 925

[SPATS No. MO-026-FOR]

Missouri Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with a reporting stipulation, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) along with supporting documentation and information pertaining to Missouri's

alternative bonding system. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002 Telephone: (618) 463-6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Missouri Program

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

II. Submission of the Proposed Amendment

By letter dated March 7, 1995, Missouri submitted a proposed amendment to its program pursuant to SMCRA (Administrative record No. MO-617). Missouri submitted the proposed amendment in response to a January 30, 1986, letter (Administrative record No. MO-351) that OSM sent to Missouri in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 925.16(g). The provisions of the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) that Missouri proposed to revise were: RSMO 444.805, Definition of Phase I reclamation bond; RSMO 444.830, Bond requirements, when a bond must be filed, the amount of a bond, and allowance for bond substitution; RSMO 444.950, Phase I reclamation bond requirements; RSMO 444.960, Establishment, purpose, and duties of the Coal Mine Land Reclamation Fund (CMLR Fund); RSMO 444.965.1, Assessment for fund; 10 CSR 40-7.011, Bond requirements; 10 CSR 40-7.021, Duration and release of reclamation liability; 10 CSR 40-7.041, Form and administration of the CMLR Fund. In addition, Missouri submitted: (1) A

narrative explaining the current and projected balances of the bond pools (Fund A and Fund B) of the CMLR Fund; (2) a discussion of how each outstanding required program amendment codified in the final rule in the May 8, 1991, Federal Register (56 FR 21281) will be resolved (Administrative Record No. MO-536); (3) an explanation of how the deficiencies identified in OSM's issue letter dated March 9, 1994 (Administrative Record No. MO-592) will be resolved; (4) a table of reclamation cost estimates for all permits except those that represent a minimal liability to the bond pools; (5) a statement from the Missouri Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeiture Project; and (6) copies of the revised bond forms utilized by Missouri.

By letter dated March 28, 1995 (Administrative Record No. MO-623), Missouri informed the OSM Kansas City Field Office of an inadvertent omission in its program amendment request, and requested inclusion in the proposed amendment of statutory revisions at RSMO 444.805 that removes the definition for "full cost bond" and revises the definition for "Phase I reclamation bond." These changes correspond to regulation changes at 10 CSR 40-7.011 and have been incorporated into this amendment.

By letter dated February 21, 1996, (Administrative Record No. MO-636), Missouri informed OSM it was removing the proposed revisions concerning administrative rulemaking procedures at RSMO 444.950(2)-(8).

The main provisions of the amendment propose to:

- Eliminate the option to post a "full cost bond" and require mandatory participation in Missouri's alternative bonding program.
- Require that up to 20 percent of Phase I reclamation bond be held until Phase III liability is released.
- Establish minimum rate adjustable Phase I reclamation bond amounts.
- Establish the CMLR Fund as part of the alternative bonding system (ABS), with 40 percent of the assessments placed in Fund A for reclamation of permits revoked prior to September 1, 1988, and 60 percent of the assessments placed in Fund B for reclamation of permits revoked after September 1, 1988.
- Allow expenditure of CMLR funds for completion of Phase I reclamation.
- Allow expenditure of Phase I reclamation bond for any phase of reclamation.

OSM published a notice in the March 27, 1995, Federal Register (58 FR 15728) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended April 26, 1995. The public hearing scheduled for April 21, 1995, was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Missouri's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

Missouri proposes revisions to the following regulations that contain language that is identical in meaning to the counterpart Federal regulations (Federal regulation counterparts are indicated in brackets): 10 CSR 40-7.11(1)(H), Definition of Surety bond [30 CFR 800.5(a)]; 10 CSR 40-7.011(2), Requirement to file a bond [30 CFR 800.11]. The Director, therefore, finds these proposed revisions to Missouri's regulations are no less effective than the federal regulations.

B. Required Program Amendments

Missouri submitted proposed revisions in response to required program amendments that the Director placed on the Missouri program at 30 CFR 925.16(g) on May 8, 1991 (56 FR 21281).

1. Required Program Amendments Satisfied by Statute or Regulation Changes in the Proposed Amendment

The Director finds that the proposed revisions to the following State statutes and regulations satisfy the indicated required program amendments and are not inconsistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations. Missouri's proposed revisions and accompanying fiscal demonstration indicate these revisions will resolve the issues associated with currently approved alternative bonding provisions. Therefore, the Director is approving them. For clarity, the required program amendments are listed below, verbatim, along with Missouri's proposed revisions.

a. *30 CFR 925.16(g)(1)*. At RSMo 444.830.1; 444.965.1; 10 CSR 40-7.011(2)(B); and 10 CSR 40-7.041(1)(A); demonstrate that the resulting financial aspect of the proposed optional participation by an applicant of either a full-cost bond or Phase I bond will ensure that the ABS can meet the requirements of 30 CFR 800.11(e) or remove this provision.

To satisfy 30 CFR 925.16(g)(1), Missouri proposes (1) at RSMo 444.830.1 to delete the option that allows an applicant to file a full-cost bond and pay a one time assessment to the CMLR Fund (the one time assessment only being required until September 1, 1993), thereby making participation in the ABS mandatory; (2) at RSMo 444.950.1 to remove the reference to a full-cost bond and to require all applicants to file a Phase I reclamation bond; (3) at RSMo 444.965.1 to delete language related to the option to file a full-cost bond; (4) at 10 CSR 40-7.011(2) (B) and (C) to delete provisions concerning filing of a full-cost bond; and (5) at 10 CSR 40-7.041(1) to delete provisions concerning assessment lump sum payments by permittees who file full cost bonds.

These proposed revisions satisfy the concerns raised by 30 CFR 925.16(g)(1), and the Director is removing this paragraph.

b. *30 CFR 925.16(g)(2)*. At RSMo 444.950.1 and 10 CSR 40-7.011(4) (A), (B), (C), and (D) to ensure that the Phase I reclamation bond amounts will cover the cost of reclamation and maintain the flexibility of conventional bonds in all situations and that the open pit minimum bond will be sufficient to assure the completion of the required reclamation in all cases.

At the time this required amendment was imposed, Missouri's program would not allow expenditure of bond pool moneys on Phase I reclamation. Missouri proposes in this amendment to (1) at RSMo 444.950.1 and 10 CSR 40-7.011(5) establish adjustable Phase I reclamation bond rates; (2) at RSMo 444.950.4 and 10 CSR 40-7.021(2)(D)1 allow retention of up to 20 percent of Phase I bond until completion of Phase III reclamation; and (3) at RSMo 444.960.5 and 10 CSR 40-7.041(4)(A)1 allow expenditure of CMLR funds for completion of Phase I reclamation.

The proposed revisions add flexibility to Missouri's alternative bonding system to ensure coverage of the cost of reclamation, and the Director is removing the required amendment at 30 CFR 925.16(g)(2).

c. *30 CFR 925.16(g)(4)*. AT RSMo 444.950.3 and 444.830.3 to require the Secretary of the Interior's approval

before adopting an alternative bonding system or delete the provision.

In response to the required program amendment at 30 CFR 925.16(g)(4), Missouri proposes to modify its requirements at RSMO 444.830.3 and 444.950.3 regarding the ability of the commission to approve an alternative bonding system by adding the language, “* * * and which is consistent with or pursuant to the purposes of Public Law 95-87, the Surface Mining Control and Reclamation Act.”

Section 509(c) of SMCRA specifically requires that the Secretary of the Interior must approve an alternative bonding system prior to a State being able to adopt the system. In a letter to Missouri dated March 9, 1994 (Administrative Record No. MO-592), OSM stated its interpretation of Missouri's intent in making this change to its statute was to indicate Missouri's agreement that the Secretary of the Interior's approval is required and Missouri would first obtain the Secretary's approval prior to implementing any alternative bonding system. Missouri's response letter dated April 4, 1994 (Administrative Record No. MO-594), confirmed that OSM's interpretation was correct and Missouri agrees that the Secretary of the Interior's approval is required prior to implementing any alternative bonding system. therefore, the Director is removing the required program amendment at 30 CFR 925.16(g)(4).

d. *30 CFR 925.16(g)(5)*. At RSMo 444.960.1 to clarify how the CMLR Fund may be expended.

At RSMo 444.960.1, Missouri's currently approved statute states that moneys within the CMLR Fund will be used by the Land Reclamation Commission (LRC) to complete the reclamation plan for any permitted lands after the proceeds from any applicable performance bond for such reclamation have been exhausted. This would conceivably allow use of moneys in the CMLR Fund to complete Phases I, II, and III reclamation requirements. However, the existing statute at RSMO 444.960.5, while allowing moneys within the 40 percent fund (Fund A) to be used for any aspect of reclamation, stipulates that moneys within the 60 percent fund (Fund B) may be used for Phases II and III reclamation only.

To satisfy 30 CFR 925.16(g)(5), Missouri proposes at RSMO 444.960.5 to allow moneys from both Fund A and Fund B to be used for all phases of reclamation. The proposed revision clarifies how the CMLR Fund may be expended, and the Director is removing the required amendment at 30 CFR 925.16(g)(5).

e. *30 CFR 925.16(g)(6)*. At RSMo 444.960.5 and 10 CSR 40-7.041(4)(A)1, to ensure that the 40 percent fund portion (Fund A) will provide sufficient funding to fully reclaim those sites forfeited prior to September 1, 1988, and demonstrate that the 60 percent fund portion (Fund B) generation of monies will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

To satisfy 30 CFR 925.16(g)(6), Missouri proposes at RSMo 444.960.5, 10 CSR 40-7.041(1)(A), and 10 CSR 40-7.041(4)(A)1 to require that moneys paid into the CMLR Fund be allocated so that 40 percent of the assessments would be used for reclaiming permits revoked by the LRC prior to September 1, 1988 (Fund A), and 60 percent of the assessments would apply to reclamation of permits revoked by the LRC after September 1, 1988 (Fund B). Moneys that existed in the CMLR Fund as of September 1, 1988, would be allocated to Fund A, as would 40 percent of all moneys assessed for the CMLR Fund after September 1, 1988, until such time that the accumulation of money in Fund A would be sufficient to complete reclamation of those permits revoked by the commission prior to September 1, 1988, after which time all moneys assessed for the CMLR Fund would be allocated to Fund B. In addition, moneys from both Fund A and Fund B would be used on any aspect of reclamation. Missouri also proposes language changes at 10 CSR 40-7.041(1)(B), (C), and (E) to maintain consistency with the proposed changes at 10 CSR 40-7.041(1)(A) and 10 CSR 40-7.041(4)(A)1.

These proposed changes will allow Fund A to accrue additional moneys to assure sufficient funding is available to fully reclaim those sites forfeited prior to September 1, 1988. The portion of 30 CFR 925.16(g)(6) that requires a demonstration that Fund B generation of moneys will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e) is incorporated into and discussed in Finding B.2 since it is redundant with 30 CFR 925.16(g)(3), which also requires a demonstration that Missouri's ABS will meet the requirements of SMCRA. Therefore, since Missouri's proposed changes satisfy the Fund A portion of the required amendment and the Fund B portion is a redundant requirement, the Director is removing 30 CFR 925.16(g)(6) in its entirety.

f. *30 CFR 925.16(g)(8)*. At RSMo 444.965.3 and 10 CSR 40-7.041(1)(B) 3, 4, 5, and 6; demonstrate that the buy out option would still allow the ABS to meet the requirements of 30 CFR 800.11(e)(1) or remove this option.

In response to 30 CFR 925.16(g)(8), Missouri proposes to delete RSMO 444.965.3 and 10 CSR 40-7.041(1)(B)3, 4, 5, and 6, all of which either provide for or relate to a buy out option. The removal of the buy out option provisions from the Missouri program satisfies OSM's concerns, and the Director is removing the required amendment at 30 CFR 925.16(g)(8).

g. *30 CFR 925.16(g)(20)*. At 10 CSR 40-7.021(2)(D)1. to clarify that its Phase I bond release for an ABS is consistently defined and used throughout its program and to provide a legal opinion of its Phase I reclamation bond release and bond coverage liability.

Missouri proposes to revise 10 CSR 40-7.021(2)(D)1 to reduce Phase I bond by 80 percent when Phase I liability is released and to clarify the remaining bond is permit specific. For consistency throughout its program, Missouri also proposes (1) at 10 CSR 40-7.011(1)(D) to modify the definition of Phase I bond to include release of 80 percent of the bond upon successful completion of Phase I reclamation of a permit area; (2) at RSMo 444.805(15), recodified from 444.805(16), to modify the definition of Phase I reclamation bond to include release of no less than 80 percent of the bond upon successful completion of Phase I reclamation of a permit area; and (3) at RSMo 444.950.4 to allow for release of no less than 80 percent of Phase I reclamation bond upon completion of Phase I reclamation.

These proposed changes assure that Missouri's Phase I bond release for its ABS is consistently defined and used throughout its program. The Federal regulations at 30 CFR 800.40(c)(1), in reference to a conventional bonding system, allow for release of 60 percent of the bond when Phase I reclamation requirements are satisfied. Since Missouri proposes mandatory participation in its alternative bonding system, which will allow moneys to be used in any phase of reclamation, release of 80 percent of the Phase I reclamation bond upon completion of Phase I reclamation would be no less effective than the Federal requirement to release 60 percent of a full cost bond upon completion of Phase I reclamation.

Replacement of the word “mine” with the word “permit” and addition of the word “remaining” at 10 CSR 40-7.021(2)(D)1 clarifies that Phase I reclamation bond release is permit specific. Therefore, a legal opinion of Missouri's Phase I reclamation bond release and bond coverage liability is no longer necessary.

Based upon the above discussions, the Director is removing the required

program amendment at 30 CFR 925.16(g)(20).

2. Required Program Amendments Satisfied by Missouri's Fiscal Demonstration

Missouri's fiscal demonstration satisfies the required program amendments at 30 CFR 925.16(g)(3), the Bond B portion of 30 CFR 925.16(g)(6), and 30 CFR 925.16(g)(7), which are set forth in the May 8, 1991, Federal Register (56 FR 21281). For clarity, the required program amendments are listed below.

30 CFR 925.16(g)(3). * * *, demonstrate that the combination of bond liability between the operator's Phase I bond and the CMLR Fund bond will meet the requirements of SMCRA.

30 CFR 925.16(g)(6). * * *, demonstrate that the 60 percent fund portion (Fund B) generation of moneys will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

30 CFR 925.16(g)(7). * * *, to assure that the fee assessment structure of the CMLR Fund will ensure that the Fund will operate in a financially solvent manner as required by 30 CFR 800.11(e).

In response to these three required program amendments, Missouri submitted the report entitled "Evaluation of Missouri's Alternative Bonding System." Information in this demonstration shows that as of February 1, 1996, Missouri's projected CMLR Fund assets exceed liabilities in both Fund A and Fund B. In addition, projection tables in the report indicate continued assessment fee payments to the Fund will enable the State to reclaim all forfeiture sites and meet contractual commitments in a timely manner without the Fund incurring a deficit through September 1998.

Section 509(c) of SMCRA and 30 CFR 800.11(e) both require that under an alternative bonding system, the regulatory authority must have available sufficient money to complete the reclamation plan for any site that may be in default at any time. An alternative bonding system cannot be allowed to incur a deficit if it is to have available adequate revenues to complete the reclamation of all outstanding bond forfeiture sites. Since Missouri's demonstration shows that the CMLR Fund has sufficient funds to fund the reclamation of forfeiture sites that may be in default at any time, the Director finds that Missouri's alternative bonding system meets the requirements of 30 CFR 800.11(e), and it is achieving the objectives and purposes of the conventional bonding program set forth in section 509 of SMCRA. However, due to the possibility of future unanticipated

bond forfeitures or increased reclamation costs on pending or existing forfeiture sites that could have significant impacts on solvency of Missouri's CMLR Fund, OSM must have a means of monitoring continued solvency of the Fund. Therefore, the Director is removing the required program amendments at 30 CFR 925.16(g)(3), (g)(6), and (g)(7), with the stipulation that Missouri submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

C. Revisions to Missouri's Statutes That Are Not Substantively Identical to the Corresponding Provisions of the Federal Statutes

1. RSMo 444.805—Definitions

Missouri proposes to recodify this section, delete the definition of "full-cost bond," and revise the definition of "Phase I reclamation bond."

a. *Full-Cost Bond.* Missouri proposes to delete the term "full-cost bond" previously defined at subsection (8), as this term is no longer used in the revised statutes. Operators will no longer have the option of posting a "full-cost bond," but will be required to post a "Phase I reclamation bond" at a minimum rate of \$2,500 an acre and pay assessments to the CMLR fund. The requirement for mandatory participation in Missouri's alternative bonding program will make the term "full-cost bond" obsolete. The Director finds that Missouri's deletion of the definition of "full-cost bond" does not render RSMo 444.805 less stringent than the requirements of SMCRA for performance bonds at section 509(a). The Director is, therefore, approving Missouri's proposal to delete the definition of "full-cost bond" at RSMo 444.805(8).

b. *Phase I Reclamation Bond.* At recodified subsection (15), previously codified subsection (16), Missouri redefines the term "Phase I reclamation bond" to mean "a bond for performance filed by a permittee pursuant to section 444.450 that may have no less than eighty percent released upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan, with the rest of the bond remaining in effect until Phase III liability is released." The previous definition for "Phase I reclamation bond" allowed Missouri to release all Phase I reclamation bond upon the successful completion of Phase I

reclamation. By requiring the retention of 20 percent of the Phase I bond until after Phase III liability is released, the revised definition provides incentive for operators to successfully complete Phase II and Phase III reclamation as required by 30 CFR 800.11(e)(2). There is no Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds this definition is not inconsistent with Federal program requirements. Therefore, the Director is approving Missouri's proposed revision to its definition of "Phase I reclamation bond" at RSMo 444.805(15).

2. RSMo 444.830—Filing Phase I Reclamation Bond

Missouri proposes to remove a provision from RSMo 444.830.1 and insert the provision at RSMo 444.850.1. This provision concerns the factors to be considered when determining the required Phase I bond amount. Since the provision is to be inserted in RSMo 444.950.1, the Director finds this change does not render the previously approved provisions at RSMo 444.830.1 and 444.950.1 less stringent than the requirements for performance bonds at section 509(a) of SMCRA and is approving the provision move.

3. RSMo 444.950—Phase I Reclamation Bond Requirements

a. *Adjustable Phase I Bond.* (1) *Minimum Adjustable Rate Phase I Reclamation Bond.* At RSMo 444.950.1, Missouri proposes to establish a minimum Phase I reclamation bond rate of \$2,500 per acre for all permitted acreage, except for coal preparation areas for which the minimum bond rate would be \$10,000 per permitted acre. OSM previously approved the \$2,500 per acre Phase I bond amount in the February 26, 1988, Federal Register (53 FR 5766) and the \$10,000 per acre bond requirement for coal preparation areas in the October 31, 1988, Federal Register (53 FR 43866) for unbonded acreage under new permits, after April 30, 1986, or permits undisturbed as of that date. Both approvals were considered to be adequate partial responses to OSM's January 30, 1986, 30 CFR part 732 notification to Missouri.

Missouri's proposal includes provisions that would allow annual adjustments of up to \$250 for the \$2,500

minimum rate and \$500 for the \$10,000 minimum rate, with maximum bond rates of \$5,000 and \$15,000, respectively. Bond amount adjustments would have to be approved through rulemaking.

Establishment of adjustable Phase I bond rates is an improvement over the previously approved fixed rates. Adjustable rates will provide the necessary flexibility to accommodate changes in the cost of future reclamation, a component essential to ensure the CMLR Fund's solvency and hence its ability to meet the criteria of 30 CFR 800.11(e). Therefore, the Director finds these revised provisions at RSMo 444.950.1 are not inconsistent with the requirements of section 509(a) of SMCRA, and he is approving them.

(2) *Factors Used to Determine Phase I Reclamation Bond Amounts.* Missouri proposes to insert a provision at RSMo 444.950.1, that was removed from RSMo 444.830.1, with no substantive changes in language. This provision concerns the factors to be considered when determining the required Phase I reclamation bond amount. These factors will be used to assess all mine sites annually to determine if an adjustment in the Phase I reclamation bond amount is necessary. The Director finds that the addition of this previously approved provision does not render the provisions at RSMo 444.950.1 less stringent than the Federal requirements for performance bonds at section 509(a) of SMCRA. Therefore, the Director is approving Missouri's proposed change.

(3) *Minimum Amount of Phase I Reclamation Bond.* Missouri proposes to remove the language "permitted surface coal mining operation" and add the word "permit" in that portion of the provision which currently requires a minimum of \$10,000 of Phase I reclamation bond be posted by an operator. The \$10,000 minimum will now apply to each permit instead of a surface coal mining operation, which might include multiple permits. Missouri also proposes to delete the language "at two thousand five hundred dollars per acre" in that portion of the provision which requires a minimum bond equivalent to 20 acres of Phase I reclamation bond be posted for each acre of open pit. This change is necessary to be consistent with Missouri's proposal to establish adjustable Phase I reclamation bond amounts. These changes are not inconsistent with section 509 of SMCRA, and represent an improvement to Missouri's alternative bonding system. Therefore, the Director is approving these revisions to RSMo 444.950.1.

b. *Acceptance of Phase I Reclamation Bond.* At RSMo 444.950.3, Missouri proposes to add the language "Phase I reclamation." This change is necessary to maintain consistency with Missouri's proposal to delete the term "full-cost bond" and revise the term "Phase I reclamation bond" at section 444.805. This proposed change is nonsubstantive and does not render section 444.950.3 less stringent than section 509(c) of SMCRA. Therefore, the Director is approving the proposed change.

c. *Release of Phase I Reclamation Bond.* At RSMo 444.950.4, Missouri proposes to add language which would allow retention of up to 20 percent of Phase I reclamation bond after completion of Phase I reclamation with the retained bond remaining in effect until completion of Phase III reclamation. This is an improvement over the existing provision which requires all Phase I bond to be released on completion of Phase III reclamation. This is an improvement over the existing provision which requires all Phase I bond to be released on completion of Phase I reclamation, and it would provide the economic incentive required by 30 CFR 800.11(e)(2) for permittees to comply with all reclamation provisions.

Missouri further proposes to allow Phase I reclamation bond be available for all phases of reclamation in the event of forfeiture. This is an improvement in the event of forfeiture. This is an improvement over the existing provision which allows the expenditure of Phase I reclamation bond only for Phase I reclamation in the event of forfeiture. Section 509(a) of SMCRA requires that the amount of the bond be sufficient to assure the completion of the reclamation plan in the event of forfeiture.

Based on the above discussions, the Director finds the proposed changes at RSMo 444.950.4 are not inconsistent with sections 509 and 519 of SMCRA, and represent an improvement in the Missouri alternative bonding program. Therefore, the Director is approving Missouri's proposed changes.

4. RSMo 444.960—Coal Mine Land Reclamation Fund

Section 509(c) of SMCRA provides that "in lieu of establishment of a bonding program, as set forth in this section, the Secretary may approve * * * an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." As stated in section 509(a) of SMCRA, one of the key objectives and purposes of the bonding program is "to assure the completion of the

reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture * * *." In furtherance of this objective, 30 CFR 800.11(e)(1) provides, in pertinent part, that OSM may approve an alternative bonding system if the alternative assures that "the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Reclamation liability under a bond pool must be continuous. The liability and obligation of an ABS does not disappear if the bond pool finds itself unable to meet its obligations as they mature, its existing capital structure is impaired, or its ability to perform any of its obligations is impaired.

To meet the requirements of 30 CFR 800.11(e), an alternative bonding system must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time, and must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

In this proposed program amendment submittal, Missouri proposes several changes to its statutes to strengthen its ABS and meet requirements of section 509 of SMCRA and 30 CFR 800.11(e).

a. *Fund A.* At RSMo 444.960, Missouri established Fund A in response to the Director's January 30, 1986, letter that required the State to outline plans to reclaim its backlog of forfeited sites. The proposed fee structure of Fund A allocates moneys that existed in the CMLR Fund as of September 1, 1988, to Fund A and allocates 40 percent of all moneys assessed for the CMLR Fund after September 1, 1988, to Fund A until such time that the accumulation of money in Fund A would be sufficient to complete reclamation of those permits revoked by the commission prior to September 1, 1988.

In addition, at the time this proposed amendment was submitted, Missouri submitted a letter from its Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeiture Project. When the proposed amendment was submitted, Missouri's statutes were silent on expenditure of Abandoned Mine Land Funds (AML Funds) on forfeiture sites where the surety became insolvent. Since then, OSM approved a proposed amendment in which Missouri made changes to its statutes to specifically allow use of AML Funds on sites where insolvency of the surety occurred (60 FR 43972, August 24, 1995). Approval of this amendment assures Missouri's statute includes

language which allows use of AML Funds on the Bill's Coal Forfeiture Project. Use of AML Funds at this site would lessen the financial burden on Fund A, thereby reducing the time period for which assessments to Fund A must continue.

Separation of Fund A from Fund B in the CMLR Fund system as proposed by Missouri will allow the funds necessary to reclaim the backlog of sites forfeited prior to September 1, 1988, and is not inconsistent with section 509(c) of SMCRA. Therefore, the Director finds that Missouri's proposed establishment of Fund A under section RSMo 444.960.1 is no less stringent than section 509(c) of SMCRA and is no less effective than 30 CFR 800.11(e). Accordingly, the Director is approving Missouri's proposed establishment of Fund A in the ABS.

b. *Fund B.* Missouri's proposed Fund B will be used to fund reclamation of sites where forfeiture occurred after September 1, 1988. The proposed fee structure requires that 60 percent of the moneys assessed for the CMLR Fund be allocated to Fund B until enough moneys accrue in Fund A to complete reclamation of sites where forfeiture occurred prior to September 1, 1988, after which Fund B will receive 100 percent of the CMLR Fund assessments.

Missouri proposes other changes which will specifically strengthen Fund B. At RSMo 444.830.1, Missouri proposes to remove the option of operators to file a full cost bond. This would require all permittees to participate in the ABS program, thereby providing potential for increased assessments to the CMLR Fund. At RSMo 444.950.4, Missouri proposes to allow retention of up to 20 percent of Phase I reclamation bond after completion of Phase I reclamation with the retained bond remaining in effect until completion of Phase III reclamation. Also at RSMo 444.950.4, Missouri proposes to allow the expenditure of Phase I reclamation bond for all phases of reclamation in the event of forfeiture. The existing provisions at RSMo 444.950.4 allow release of all Phase I bond on completion of Phase I reclamation and the expenditure of Phase I reclamation bond only for Phase I reclamation in the event of forfeiture. These changes would potentially lessen the burden on Fund B when forfeitures occur. As previously discussed in this final rule, all of these proposed changes are being approved by the Director.

The Director finds that Missouri's proposed concept of Fund B is not inconsistent with section 509(c) of SMCRA or 30 CFR 800.11(e). Therefore,

the Director is approving Missouri's proposed establishment of Fund B under section RSMo 444.960.

5. RSMo 444.965—Payments to the CMLR Fund

a. *Redesignations.* In Missouri's proposed amendment, RSMo 444.965.4 is redesignated 444.965.3, section 444.965.5 is redesignated section 444.965.4, and section 444.965.6 is redesignated section 444.965.5. These changes do not render the previously approved provisions of RSMo 444.965 less stringent than the requirements of section 509 of SMCRA. Therefore, the Director is approving the redesignations.

b. *CMLR Fund Adjustment.* Proposed language at newly codified RSMo 444.965.4, recodified from section 444.965.5, would require that after the date when enough moneys have accumulated in the 40 percent pool (Fund A) to complete reclamation on sites revoked prior to September 1, 1988, whenever the fund balance falls below \$7 million, tonnage assessments would resume at the rate of 25 cents per ton for the first 50,000 tons and 15 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year by a permittee, and the assessments would remain in effect until the fund balance once again achieved at least \$7 million dollars at the close of the State's fiscal year.

Missouri's proposed tonnage rate assessments at section 444.965.4 would allow reductions in the assessment rates provided at section 444.965.2. Such fee assessments reductions would probably not jeopardize solvency of the CMLR Fund because at the time of such reductions, enough moneys would already have accumulated to reclaim the backlog of forfeited sites where revocation occurred prior to September 1, 1988. The Director finds the changes proposed by Missouri are not inconsistent with the requirements of section 509(c) of SMCRA. Therefore, the Director is approving Missouri's proposed changes at section 444.965.4.

c. *CMLR Fund Balance Below \$2 Million.* At newly codified RSMo 444.965.5, recodified from section 444.965.6, Missouri proposes that: "After September 1, 1998, whenever the fund balance falls below \$2 million, the assessment rate established in subsection 2 of the section [RSMo 444.965.2] shall increase to a per ton rate of 30 cents per ton for the first 50,000 tons and 20 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year by a permittee. The increased tonnage assessment shall

remain in effect until the fund balance is at least \$3 million at the close of the State's fiscal year, at which time the assessment rate will revert to the rate established pursuant to subsection 4 of this section [RSM 444.965.4]." The proposed increase in assessment rates after September 1, 1998, whenever the fund balance falls below \$2 million will increase Missouri's ability to adjust the fee schedule for the CMLR Fund when necessary. The Director finds the changes proposed by Missouri are not inconsistent with the requirements of section 509(c) of SMCRA. Therefore, the Director is approving the changes proposed by Missouri at section 444.965.5.

D. Revisions to Missouri's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 10 CSR 40-7.011—Bond Requirements

a. *10 CSR 40-7.011(1), Definitions.* (1) *Redesignations.* In Missouri's proposed amendment, 10 CSR 40-7.011(1)(B) is redesignated 10 CSR 40-7.011(1)(A), 10 CSR 40-7.011(1)(C) is redesignated 10 CSR 40-7.011(1)(B), 10 CSR 40-7.011(1)(D) is redesignated 10 CSR 40-7.011(1)(C), 10 CSR 40-7.011(1)(E) is redesignated 10 CSR 40-7.011(1)(D), 10 CSR 40-7.011(1)(F) is redesignated 10 CSR 40-7.011(1)(G), and 10 CSR 40-7.011(1)(G) is redesignated 10 CSR 40-7.011(1)(H). These changes do not render the previously approved provisions at 10 CSR 40-7.011(1) less effective than the Federal regulations. Therefore, the Director is approving the redesignations.

(2) *Definition of "Full Cost Bond."* At 10 CSR 40-7.011(1)(A), Missouri proposes to delete the definition of "full-cost bond." Deletion of this definition is discussed in Finding C.1.a. of this document. In that finding, the Director is approving Missouri's proposal to delete the definition of "full-cost" bond from its statutes. Therefore, the Director is also approving Missouri's proposal to delete the definition of "full-cost bond" from its regulations at 10 CSR 40-7.011(1)(A).

(3) *Definition of "Phase I Bond."* At 10 CSR 40-7.011(1)(D), previously designated 10 CSR 40-7.011(1)(E), Missouri proposes to redefine the term "Phase I reclamation bond." Redefinition of this term is discussed in Finding C.1.b. of this document. In that finding, the Director is approving Missouri's proposal to redefine the term in its statutes. Since the definition in Missouri's regulation is substantively the same as the definition in its statute,

the Director is also approving Missouri's proposal to redefine the term "Phase I bond" in its regulation at 10 CSR 40-7.011(1)(D).

(4) *Definition of "Phase II Bond."* At 10 CSR 40-7.011(1)(E), Missouri proposes to add a definition for "Phase II bond." It is defined as "performance bond conditioned on the release of Phase II liability." There is no direct Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds Missouri's proposed definition of "Phase II bond" is not inconsistent with the Federal regulation requirements. Therefore, the Director is approving Missouri's proposal to add a definition for "Phase II bond" at 10 CSR 40-7.011(1)(E).

(5) *Definition of "Phase III Bond."* At 10 CSR 40-7.011(1)(F), Missouri proposes to add a definition for "Phase III bond." It is defined as "performance bond conditioned on the release of Phase III liability." There is no direct Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds Missouri's proposed definition of "Phase III bond" is not inconsistent with the Federal regulation requirements. Therefore, the Director is approving Missouri's proposal to add a definition for "Phase III bond" at 10 CSR 40-7.011(1)(F).

b. *10 CSR 40-7.011(3), Incremental Bonding.* (1) *Filing Incremental Bond.* At 10 CSR 40-7.011(3)(A), Missouri proposes to add the provision, "Disturbance is prohibited on succeeding increments, underground shafts, tunnels, or operations prior to acceptance of bond." This provision is substantially the same as that found at 10 CSR 40-7.011(c). Therefore, the Director finds that addition of this provision does not render 10 CSR 40-7.011(3)(A) less effective than the Federal regulations, and he is approving the addition as proposed by Missouri.

(2) *Identification of Increments for Bonding.* At 10 CSR 40-7.011(3)(D),

Missouri proposes to add the language, "'* * * submit an incremental bonding schedule and * * *.'" Although the counterpart Federal regulation at 30 CFR 800.11(b)(3) does not require submission of an incremental bonding schedule, the Federal regulation at 30 CFR 800.11(d)(3) does require the applicant to submit an incremental bond schedule if he elects to bond in increments. Therefore, the Director finds that addition of this requirement to 10 CSR 40-7.011(3)(D) does not render it less effective than 30 CFR 800.11(b)(3), and is approving the addition of language as proposed by Missouri.

(c) *10 CSR 40-7.011(4), Bond Amounts.* (1) *Minimum per Acre Phase I Bond Amounts.* At 10 CSR 40-7.011(4)(A), Missouri proposes to make language changes and deletions to retain consistency with proposed changes at RSMo 444.950.1 concerning minimum Phase I reclamation bond amounts. Missouri, also, proposes to add the provision now found at 10 CSR 40-7.011(4)(C) which establishes the minimum amount of Phase I reclamation bond required for each acre of coal preparation area. The proposed revisions to Missouri's statute requirements for minimum Phase I reclamation bond amounts are discussed in Finding C.3.a.(1) in this document. In that finding, the Director approved Missouri's proposed changes to its statute at RSMo 444.950.1. Therefore, the Director is also approving Missouri's proposed language changes, additions, and deletions as proposed at 10 CSR 40-7.011(4)(A), since they are consistent with the approved statute revisions at RSMo 444.950.1.

(2) *Minimum Phase I Bond for a Permit.* At existing 10 CSR 40-7.011(4)(D), redesignated as 10 CSR 40-7.011(4)(B), Missouri proposes to change language so that the minimum amount of Phase I bond required for mines with fewer than 1,000 acres shall be \$10,000, or the equivalent of 20 acres of bond for each acre of open pit area, for a single permit instead of mine, and remove the definition of a "single mine." The Federal regulations at 30 CFR 800.14(b) set a minimum bond requirement of \$10,000 for the entire area under one permit. Missouri's proposed changes at 10 CSR 40-7.011(4)(B) would also establish a minimum bond rate of \$10,000 for the area under one permit. Therefore, the Director finds Missouri's proposed changes are no less effective than the Federal regulations at 30 CFR 800.14(b), and he is approving Missouri's proposed changes at redesignated 10 CSR 40-7.011(4)(B).

(3) *Deleted Regulations.* Missouri proposes to delete existing 10 CSR 40-7.011(4) (B), (C), (E), (F), (G), (H), and (I).

(a) At existing 10 CSR 40-7.011(4)(B), the provision allows for a lesser amount of bond per acre than the \$2,500 minimum bond per acre set by 10 CSR 40-7.011(4)(A). Deletion of existing 10 CSR 40-7.011(4)(B) will allow bond on any permitted acreage to be no less than the \$2,500 bond per acre required by 10 CSR 40-7.011(4)(A). The Director finds deletion of existing 10 CSR 40-7.011(4)(B) will not render 10 CSR 40-7.011(4) less effective than the Federal requirements at 30 CFR 800.14(b).

(b) The provision at 10 CSR 40-7.011(4)(C) is being added to 10 CSR 40-7.011(4)(A). The Director finds deletion of 10 CSR 40-7.011(4)(C) and insertion of the provision at 10 CSR 40-7.011(4)(A) will not render 10 CSR 40-7.011(4) less effective than the Federal requirements at 30 CFR 800.14(b).

(c) The provisions at 10 CSR 40-7.011(4) (E), (F), (G), (H), and (I) all pertain to full-cost bonding. Deletion of the option to file a full-cost bond in the Missouri statutes is discussed in Finding B.1.a. In that finding, the Director approved Missouri's proposal at RSMo 444.830.1 to delete the option to file a full-cost bond. Therefore, the Director is approving Missouri's proposal to delete existing regulations pertaining to full-cost bond at 10 CSR 40-7.011(4) (B), (C), (E), (F), (G), (H), and (I).

d. *10 CSR 40-7.011(5), Adjustment of Bond Amounts.* Missouri proposes to add new section 10 CSR 40-7.011(5), which includes provisions at subsections (A), (B), (C), (D), and (E), that would allow the State to adjust Phase I bond rates to ensure adequate bonding amounts. The provisions at proposed new section 10 CSR 40-7.011(5) are substantially the same as the proposed provisions of Missouri's statute at RSMo-444.950.1, which are discussed in Finding C.3.a.(1). In that finding, the Director is approving Missouri's proposed statute provisions concerning adjustment of Phase I bond amounts. Therefore, the Director is approving Missouri's proposed regulation provisions at 10 CSR 40-7.011(5).

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

a. *10 CSR 40-7.021(2) Criteria and Schedule for Release of Reclamation Liability.* (1) *General.* At 10 CSR 40-7.021(2), Missouri proposes to remove the provision concerning retention of bond on unreclaimed temporary structures, such as roads, sediment ponds, diversions, and stockpiles where

Phase I, II, and III liabilities under the alternative bonding system apply and on a reclamation cost estimate basis where full-cost bonding applies. Missouri is proposing to move that portion of the provision pertaining to Phase I bond to 10 CSR 40-7.021(2)(A), and is proposing to delete that portion of the provision pertaining to full-cost bonding. As discussed in Finding B.1.a., the Director is approving Missouri's proposal to delete the option to file a full-cost bond. Therefore, none of the existing Missouri program provisions are rendered less effective by this proposed move and deletion, and the Director is approving Missouri's proposed revision at 10 CSR 40-7.021(2).

(2) *10 CSR 40-7.021(2)(A) Qualification for Release of Phase I Liability.* As discussed above, Missouri proposes to move the requirement that Phase I bond be retained on unreclaimed temporary structures, such as roads, sediment ponds, diversions, and stockpiles from 10 CSR 40-7.021(2) to 10 CSR 40-7.021(2)(A). Retention of bond for unreclaimed temporary structures is not addressed as separate requirements in the Federal regulations for bond release; however, Phase I bond release may not be approved until backfilling, grading, and drainage control in accordance with the reclamation plan is complete. Since 10 CSR 40-7.021(2)(A) retains its requirement for completion of backfilling, grading, and drainage control prior to Phase I bond release, the existing regulation provisions are not rendered less effective by the inclusion of the requirement for retention of bond for unreclaimed temporary structures. Therefore, the Director finds the proposed revision is no less effective than the Federal regulations at 30 CFR 800.40(c)(1), and is approving Missouri's proposed change at 10 CSR 40-7.021(2)(A).

(3) *10 CSR 40-7.021(2)(D)1 Release of Phase I Bond When Phase I Reclamation is Completed.* In addition to the proposed changes at 10 CSR 40-7.021(2)(D)1 previously discussed in Finding B.1.b., Missouri proposes to add language to require that after 80 percent of Phase I bond is released, the total remaining bond for a single permit shall not be below the amount required by 10 CSR 40-7.011(4)(B). As discussed in Finding D.1.c.(2), the Director is approving new 10 CSR 40-7.011(4)(B) which requires that the minimum amount of Phase I bond applied to a single permit shall be \$10,000, or the equivalent of 20 acres of bond for each acre of open pit area, whichever is greater. The Director finds Missouri's

proposed change does not render 10 CSR 40-7.021(2)(D)1 less effective than the requirements of 30 CFR 800.40(c)(1), and he is approving it.

(4) *10 CSR 40-7.021(2)(D)2 Release of Remaining Phase I Reclamation Bond.* At 10 CSR 40-7.021(2)(D)2, Missouri proposes to delete language pertaining to release of full-cost bonds and to add the following language pertaining to release of Phase I reclamation bond: "The remaining amount of the bonds shall be released when Phase III liability is released." Deletion of the option to file a full-cost bond is discussed in Finding B.1.a. In that finding, the Director approved Missouri's proposal to delete the option to file a full-cost bond from its statutes. Retention of a portion of Phase I bond until completion of Phase III reclamation is discussed in Finding C.3.c. In that finding, the Director approved Missouri's provision in its statutes to retain up to 20 percent of Phase I bond until completion of Phase III reclamation. These changes proposed by Missouri are necessary to maintain consistency in its program and are not inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Missouri's proposed changes at 10 CSR 40-7.021(2)(D)2.

(5) *10 CSR 40-7.021(2)(E) Release of Bond from Undisturbed Areas.* At 10 CSR 40-7.021(2)(E), Missouri proposes to clarify its provision for release of bond liability from undisturbed areas which are adjacent to disturbed lands by specifying that the bond "may" be released instead of "shall" be released and by adding language pertaining to surface mining disturbances: "All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased." In addition, Missouri proposes to clarify that "The permit shall terminate on all areas where all bonds have been released." Federal regulations at 30 CFR 800.15(c) allow reduction of bond liability for undisturbed land. Although the Federal regulations for undisturbed areas do not contain specific language pertaining to permit termination, the Director finds the proposed changes would not render 10 CSR 40-7.021(2)(E) inconsistent with SMCRA or the Federal regulations and is approving them.

b. *10 CSR 40-7.021(5) Requirement to File an Affidavit.* On the State's initiative, additional requirements for bond release are proposed to be added to the Missouri program. Specifically, Missouri proposes to add a new section 10 CSR 40-7.021(5) which would require an operator who is seeking a Phase III bond release to file an affidavit

with the recorder of deeds in the county where mining occurred describing the parcel(s) of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of the land. This requirement would be applicable to mined land where Phase I reclamation was completed on or after September 1, 1992. There is no Federal counterpart to the proposed provision for Phase III bond release at section 519 of SMCRA or 30 CFR 800.40(c). The Director finds the additional requirements would not adversely impact the Missouri program as none of the existing program provisions are rendered less effective than the Federal regulations by the inclusion of the additional requirements. Therefore, he is approving 10 CSR 40-7.021(5) as proposed.

3. 10 CSR 40-7.041 Form and Administration of the Coal Mine Land Reclamation Fund

Missouri proposes to delete 10 CSR 40-7.041(4)(A)2. This provision stipulates that Reclamation Fund moneys cannot be expended for reclamation or areas bonded by full-cost bonds. Since Missouri also proposes in this amendment to remove the option to file a full-cost bond, this proposed deletion is necessary to maintain consistency in the Missouri program. As discussed in Finding B.1.a., the Director is approving the deletion of the option to file a full-cost bond from the Missouri program. Therefore, the Director finds Missouri's proposed deletion of 10 CSR 40-7.041(4)(A)2 will not render 10 CSR 40-7.041(4)(A) less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because on one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Missouri program. No comments from Federal agencies were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

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

None of the revisions that Missouri proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (Administrative Record Nos. MO-621 and MO-624). EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director is approving, with a reporting stipulation, the proposed amendment as submitted by Missouri on March 7, 1995, and March 28, 1995. This stipulation requires Missouri to submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

The changes approved in this rulemaking strengthens the Missouri program and, as such, are consistent with SMCRA and the Federal regulations at 30 CFR 732.17(g).

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

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. With respect to those changes in State laws and regulations approved in this document, the Director is making the final rule effective immediately.

Effect of Director's Decision

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

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon 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. Accordingly, this rule will ensure that

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

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.
Brent Wahlquist,
Regional Director, Mid-Continent Regional
Coordinating Center.

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

PART 925—MISSOURI

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

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

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

§ 925.15 Approval of regulatory program amendments.

* * * * *

(t) Revisions to the following statutes and regulations, as submitted to OSM on March 7 and March 28, 1995, are approved effective May 28, 1996, with a reporting stipulation that requires Missouri to submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

(1) Revisions to the Revised Statutes of Missouri (RSMo).

RSMo 444.805—Deletion of the definition of full-cost bond and revision of the definition of Phase I reclamation bond.

RSMo 444.830.1—Deletion of option to file a full-cost bond and revision to Phase I reclamation bond filing requirements.

RSMo 444.830.3—Commission's adoption of an alternative bonding system.

RSMo 444.950.1—Phase I reclamation bond amount requirements, including annual adjustments proposed through the Missouri rulemaking process.

- RSMo 444.950.3—Self-bonding requirements and adoption of an alternative bonding system.
- RSMo 444.950.4—Phase I reclamation bond liability.
- RSMo 444.960.1—Establishment of the CMLR Fund.
- RSMo 444.960.5—Allocation and use of the A (40%) and B (60%) portions of the CMLR Fund.
- RSMo 444.965.1—CMLR initial assessments.
- RSMo 444.965.3—Deletion of buy-out option.
- RSMo 444.965.4—CMLR Fund Adjustment.
- RSMo 444.965.5—CMLR assessment increase.
- (2) Revisions to the Missouri Code of Regulations (CSR) at 10 CSR 40–7.
- 10 CSR 40–7.011(1)—Deletion of the definition of full-cost bond, revision of the definition of Phase I bond, and addition of definitions for Phase II and Phase III bond.
- 10 CSR 40–7.011(2)—Revision of requirements to file a bond.
- 10 CSR 40–7.011(3)—Filing of incremental bond and identification of increments for bonding.
- 10 CSR 40–7.011(4)—Minimum per acre Phase I bond amounts, minimum Phase I bond for a permit, and deletion of full-cost bonding provisions.
- 10 CSR 40–7.011(5)—Annual adjustment of Phase I bond amounts.
- 10 CSR 40–7.021(2)—Concerning criteria and schedule for release of reclamation liability, qualification for release of Phase I liability, release of Phase I bond when Phase I reclamation is completed, and release of bond from undisturbed areas.
- 10 CSR 40–7.021(5)—Requirement to file an affidavit at Phase III release of underground mining acreage.
- 10 CSR 40–7.041(1)—Payment to the 40 percent pool, assessment rates, continuation of monthly assessments, and reinstatement rates.
- 10 CSR 40–7.041(4)—Expenditure of reclamation fund moneys.

§ 925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (g)(1) through (g)(8) and (g)(20).

[FR Doc. 96–13261 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 925

[SPATS No. MO–025–FOR]

Missouri Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the “Missouri program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a proposed set of revegetation success guidelines and a rulemaking that eliminates the reference to an earlier set of guidelines that was never approved by OSM. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Proposed Amendment
- III. Director’s Findings
- IV. Summary and Disposition of Comments
- V. Director’s Decision
- VI. Procedural Determinations

I. Background on the Missouri Program

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

II. Submission of the Proposed Amendment

By letter dated December 14, 1995 (Administrative Record no. MO–633), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to the required program amendments at 30 CFR 925.16 (a) and (p)(6). The

provisions of the Code of State Regulations (CSR) that Missouri proposes to amend are: 10 CSR 40–3.120/3.270(c)(B)2.A–H., Specific revegetation success standards for postmining land uses. Specifically, Missouri proposes revisions to its approved program for evaluating revegetation success. Missouri revised its regulations for the specific standards for each of its approved land uses to delete the reference to an earlier set of guidelines that had not been approved by OSM and reference the guidelines as currently proposed in this amendment. The proposed revegetation success guidelines consist of eight separate guidance documents that establish the revegetation success standards by land use. These documents are titled the: (1) Phase II and Phase III revegetation standards for prime farmland; (2) Phase III revegetation standards for cropland; (3) Phase III revegetation standards for pasture and previously mined areas; (4) Phase III revegetation standards for wildlife habitat; (5) Phase III revegetation standards for woodland; (6) Phase III revegetation standards for industrial/commercial revegetation; (7) Phase III revegetation success standards for residential land use; and (8) Phase III revegetation success standards for recreation land use. Each set of guidelines elaborates by land use type the revegetation success standards, measurement frequency, sampling procedures, data submission and analysis, maps, and mitigation plan requirements. The guidance documents follow the approved Missouri program regulations at 10 CSR 40–3.120/3.270(6).

OSM announced receipt of the proposed amendment in the January 26, 1996, Federal Register (61 FR 2459), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 26, 1996.

III. Director’s Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director’s findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.