

This methodology would combine takes and entitlements by requiring lessees to report and pay on volumes equal to the sales by the lessee divided by the total sales for the property times the allocated volume under the commingling approval for the property. Consider lessees C and D: In this example, lessee C would report and pay on 28,302 Mcf, even though it actually took 30,000 Mcf, and its entitled volume is 37,500 Mcf. The 28,302 Mcf is computed as follows:

$$(30,000 \text{ Mcf} / 53,000 \text{ Mcf}) \times 50,000 \text{ Mcf} = 28,302 \text{ Mcf for lessee C, where } 53,000 \text{ Mcf (total sales for the property) is the sum of } 30,000 \text{ Mcf (lessee C's total sales) and } 23,000 \text{ Mcf (lessee D's total sales), and } 50,000 \text{ Mcf is the allocated volume under the commingling approval for the property. Lessee D's initial reporting and payment would be computed similarly.}$$

Considering lessees A and B: If a lessee took no production (lessee B in this example), it would not have to pay any royalty. However, a lessee (lessee A in this example) could pay royalty on a volume greater than either its actual takes or its entitled share. Under this methodology, MMS would be made whole each month because it would receive royalty based on the total Federal production subject to the commingling approval each month. Therefore, an adjustment to the entitled volume, as discussed above for Example 1, would not be necessary. In Example 3, lessees would have to adjust their payments among themselves.

As explained above, in instances where a lessee pays on "Pure Entitlements" such as Example 2, or "Proportionate Takes" such as Example 3, the lessee may take production that is more or less than its entitled share. In that case, a lessee would need to value its entitled share. The MMS believes that the best means of valuing the entitled share is to apply a volume weighted average of the royalty values of the volumes actually taken to the entitled shared volumes. The MMS requests comments on any other alternatives for valuing such volumes.

In addition, MMS is interested in receiving comments on these three Examples which describe alternative methodologies. The MMS is also interested in receiving comments on any other alternative methodologies. If you propose a methodology different from those discussed above, please use our example criteria and explain why you believe your methodology is the best alternative. In addition, MMS would like your input on how the various methodologies would affect your business practices, bookkeeping, etc.

Dated: November 14, 2005.

R.M. "Johnnie" Burton,

Assistant Secretary for Land and Minerals Management.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[Docket No. MO-038-FOR]

Missouri Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Missouri intends to revise its program to improve operational efficiency.

Currently, we are substituting direct Federal enforcement for portions of the Missouri program. With the substitution of Federal enforcement authority, we outlined a process by which Missouri could regain full authority for its program. As part of this process, Missouri proposes to amend its approved regulatory program and submitted a temporary emergency regulatory program rule (emergency rule). The purpose of the emergency rule is to revise Missouri's regulations regarding bonding of surface coal mining and reclamation operations to allow Missouri to transition from a "bond pool" approach to a "full cost bond" approach. We are announcing receipt of the emergency rule in this rulemaking. Missouri has indicated that, in the near future, it will submit a permanent regulatory program rule (permanent rule) regarding its bonding regulations and that this rule will contain regulatory language that is substantially identical to the language in this emergency rule. If we approve the emergency rule and Missouri submits the permanent rule with language that has the same meaning as the emergency rule, we will publish a final rule and the permanent rule will become part of the Missouri program.

This document gives the times and locations that the Missouri program and

proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.t., December 29, 2005. If requested, we will hold a public hearing on the amendment on December 27, 2005. We will accept requests to speak at a hearing until 4 p.m., c.t. on December 14, 2005.

ADDRESSES: You may submit comments, identified by Docket No. MO-038-FOR, by any of the following methods:

- E-mail: IFOMAIL@osmre.gov.
- Mail/Hand Delivery: Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002.

- Fax: (618) 463-6470
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Missouri program, this amendment, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Alton Field Division. Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460, E-mail: IFOMAIL@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location: Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751-4041.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463-6460. E-mail: IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Missouri Program

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, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, 925.16, 925.17, 925.18, and 925.19.

II. Description of the Proposed Amendment

On November 21, 1980, the Secretary conditionally approved the Missouri program under the Act. On June 19, 2003, the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program's (MLRP) notified us that the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. On July 21, 2003, the Governor of Missouri (Governor) notified us that the State of Missouri was experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). On August 4, 2003, we notified the Governor that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed (Administrative Record No. MO-664.4). In accordance with the provisions of 30 CFR 733.12(f), we announced our decision, effective August 22, 2003, to institute direct Federal enforcement for those portions of the Missouri program that the MLRP could not adequately implement and enforce. With the substitution of Federal enforcement authority, we outlined a process by

which Missouri could regain full authority for its program (See 68 FR 50944, dated August 22, 2003, and 69 FR 19927, dated April 15, 2004).

By letter dated May 27, 2005, the Governor of Missouri petitioned us to consider returning to Missouri the authority to implement and enforce those parts of the Missouri program for which we substituted Federal enforcement (Administrative Record No. MO-664.42). As part of the process of resuming the regulatory authority, Missouri proposes to amend the Missouri program in two steps. The first step involves the State submitting a temporary emergency rule in order to revise its regulations regarding bonding of surface coal mining and reclamation operations. The emergency rule will allow Missouri to transition, in a timely manner, from a "bond pool" approach to bonding to a "full cost bond" approach.

The second step in amending Missouri's approved regulatory program is for Missouri to submit a permanent rule regarding its bonding regulations. Missouri has indicated that the State will submit this permanent rule in the near future and that it will contain regulatory language that is substantively identical to the language in the emergency rule. If we approve the emergency rule and Missouri submits the permanent rule with language that has the same meaning as the emergency rule, we will publish a final rule and the permanent rule will become part of the Missouri program.

To fulfill the first step in amending its approved regulatory program and to improve operational efficiency, Missouri sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) dated October 31, 2005 (Administrative Record No. MO-665). We are announcing receipt of the "emergency rule" amendment in this rulemaking.

Below is a summary of the changes proposed by Missouri. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. 10 CSR 40-7.011 Bond Requirements

1. 10 CSR 40-7.011(1) Definitions

Missouri proposes to revise subparagraphs (1)(C) and (D) regarding definitions for "Personal bond" and "Phase I bond," respectively.

2. 10 CSR 40-7.011(2) Requirement to File a Bond

Missouri proposes to revise subsection (2) pertaining to the permit

applicant's requirement to file a bond after an application for a surface coal mining and reclamation operation has been approved.

3. 10 CSR 40-7.011(4) Bond Amounts

Missouri proposes to revise subsection (4) regarding how the bond amount for a surface coal mining and reclamation operation is to be determined.

4. 10 CSR 40-7.011(5) Changing Bond Amounts

Missouri proposes to revise subparagraphs (5)(A) through (5)(D) and to delete subparagraph (5)(E). This subsection describes how and when bond adjustments for a surface coal mining and reclamation operation are to be determined and the procedures to be followed for adjusting the bond amounts.

5. 10 CSR 40-7.011(6) Types of Bonds

a. 10 CSR 40-7.011(6)(A) Surety Bonds

Missouri proposes to revise subparagraphs (6)(A)6 and 8 of its regulations regarding surety bonds.

b. 10 CSR 40-7.011(6)(B) Personal Bonds Secured by Certificates of Deposit

Missouri proposes to revise subparagraphs (6)(B)1, 2, and 4 through 7 regarding personal bonds secured by certificates of deposit.

c. 10 CSR 40-7.011(6)(C) Personal Bonds Secured by Letters of Credit

Missouri proposes to revise subparagraphs (6)(C)1, 3, 4, 8, and 9 regarding personal bonds secured by letters of credit.

d. 10 CSR 40-7.011(6)(D) Self Bonding

Missouri proposes to revise subparagraphs (6)(D)1, 2, 3, 5, 6, and 8 regarding self bonding by permit applicants.

6. 10 CSR 40-7.011(7) Replacement of Bonds

Missouri proposes to revise subparagraph (7)(A) regarding a permittee's election to replace the bond for a surface coal mining and reclamation operation.

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

1. 10 CSR 40-7.021(1) Period of Liability

Missouri proposes to revise subparagraph (1)(A) regarding the period of liability coal operators have for surface coal mining and reclamation operations.

2. 10 CSR 40–7.021(2) Criteria and Schedule for Release of Reclamation Liability

Missouri proposes to revise subparagraphs (2)(A) through (2)(E) regarding the criteria and schedule for releasing reclamation liability.

C. 10 CSR 40–7.031 Permit Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies

1. 10 CSR 40–7.031(2) Procedures

Missouri proposes to revise subparagraph (2)(E) regarding procedures for revoking or suspending a surface coal mining and reclamation permit.

2. 10 CSR 40–7.031(3) Bond Forfeiture

Missouri proposes to revise subparagraph (3)(C) regarding forfeiture of bond after a surface coal mining and reclamation permit is revoked.

3. 10 CSR 40–7.031(4) Declaration of Permit Revocation

Missouri proposes to revise subsection (4) regarding the director of the Land Reclamation Program's (director) authority to use appropriated reclamation fund monies from the Coal Mine Land Reclamation Fund for bonds forfeited before January 1, 2006. Missouri also proposes to revise this subsection regarding the director's authority to use proceeds from bonds forfeited on or after January 1, 2006. The purpose of the revision is to ensure compliance with all applicable regulations and satisfactory completion of reclamation on surface coal mining and reclamation permit sites.

D. 10 CSR 40–7.041 Form and Administration of the Coal Mine Land Reclamation Fund

Missouri proposes to delete subsections (1) through (3) pertaining to the Coal Mine Land Reclamation Fund regarding payment of assessments, fund ceiling and reimbursements, and penalties for delinquent payment of fees. Missouri also proposes to revise subsections (4) and (5) and redesignate them as subsections (1) and (2), respectively. These subsections pertain to expenditure of reclamation fund monies and reimbursement of the reclamation fund.

E. 10 CSR 40–7.050 Requirements, Conditions and Terms of Liability Insurance

Missouri proposes to revise subsection (2) regarding the terms and conditions for liability insurance.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Alton Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: [Docket No. MO-038-FOR]" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Alton Field Division at (618) 463-6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on December 14, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We

will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule 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 expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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 certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; 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 upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Region.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–025–FOR]

Montana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the “Montana program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes revisions to, additions of, and deletions of rules about: Definitions; permit application requirements; application processing and public participation; application review, findings, and issuance; permit conditions; permit renewal; performance standards; prospecting permits and notices of intent; bonding and insurance; protection of parks and historic sites; lands where mining is prohibited; inspection and enforcement; civil penalties; small operator assistance program (SOAP); restrictions on employee financial interests; blasters license; and revision of permits.

Montana intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and to clarify ambiguities.

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