

transactions to CSA recordkeeping and reporting requirements. Domestic and import transactions involving chemical mixtures containing acetone, ethyl ether, 2-butanone and toluene are not subject to the following information collections: DEA information collection 1117-0023: Import/Export Declaration for List I and List II Chemicals [imports only]; and DEA information collection 1117-0029: Annual Reporting Requirement for Manufacturers of Listed Chemicals.

#### List of Subjects In 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and Recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1310 is amended to read as follows:

#### PART 1310—[AMENDED]

■ 1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. Section 1310.08 is amended by revising paragraph (l) to read as follows:

#### § 1310.08 Excluded Transactions.

\* \* \* \* \*

(l) Domestic and import transactions in chemical mixtures that contain acetone, ethyl ether, 2-butanone, and/or toluene, unless regulated because of being formulated with other List I or List II chemical(s) above the concentration limit.

Dated: March 1, 2007.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 925

[Docket No. MO-039-FOR]

#### Missouri Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Missouri regulatory program (Missouri program) regarding bonding under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the

Act). Previously, we approved an emergency rule that allowed Missouri to transition from a “bond pool” approach to bonding to a “full cost bond” approach in a timely manner. We are now approving Missouri’s permanent rule concerning this same topic. Missouri proposed to revise its program to improve operational efficiency.

**DATES:** *Effective Date:* March 12, 2007.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. 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 State 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 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 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, and 925.16.

#### II. Submission of the Amendment

By letter dated October 11, 2006 (Administrative Record No. MO-666), Missouri sent us a “permanent rule” amendment to its program regarding bonding under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment was sent as a replacement for Missouri’s “emergency rule” that we previously approved on June 8, 2006 (71 FR 33243). The “emergency rule” allowed Missouri to transition from a “bond pool” approach to bonding to a “full cost bond” approach in a timely manner. The “permanent rule” amendment, when approved, will become a permanent part of Missouri’s program.

We announced receipt of Missouri’s proposed “emergency rule” amendment in the November 29, 2005, **Federal Register** (70 FR 71425). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one and we did not receive any comments. We also stated in this **Federal Register** document that if Missouri submitted a “permanent rule” with language that has the same meaning as the “emergency rule,” we would publish a final rule and Missouri’s “permanent rule” would become part of the Missouri program. Because Missouri’s “permanent rule” has the same meaning as the “emergency rule,” we are proceeding with the final rule.

#### III. OSM’s Findings

Following are the findings we made concerning Missouri’s “permanent rule” amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

##### A. Minor Revisions to Missouri’s Regulations

Missouri’s definition for “regulatory authority,” found at 10 CSR [Code of State Regulations] 40-8.010(82), means the Land Reclamation Commission (commission), the director, or their designated representatives and employees unless otherwise specified in the State’s rules. Missouri proposed to replace the words “commission” or “regulatory authority” with the word “director” in the following regulations: 10 CSR 40-7.011(2)(A), (3)(C), (4)(B), (6)(B)1., 5., 6., and 7., (6)(C)1. and 8., (6)(D)2., and (6)(D)2.B, 3.B, 3.B(I) and 5.C; and 10 CSR 40-7.041(1)(A), (B)1. and (B)2. Missouri proposed to improve operational efficiency by specifying that the director is to perform certain duties. We find that the substitution of the word “director” for the words “commission” or “regulatory authority” will not render Missouri’s regulations less effective than the Federal regulations because in accordance with Missouri’s definition for regulatory authority, the director is a regulatory authority as is the commission and the certain duties specified in the regulations cited above are not duties reserved solely for the commission according to section 444.810 of Missouri’s surface coal mining law.

Therefore, we are approving these revisions.

*B. Revisions to Missouri's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

The State regulations listed in the table below contain language that is the

same as or similar to the corresponding sections of the Federal regulations.

Topic	Missouri regulation (10 CSR)	Federal counterpart regulation (30 CFR)
Requirement to File a Bond .....	40-7.011(2)(B) .....	800.11(d).
Bond Amounts .....	40-7.011(4) .....	800.14(a) and (b).
Changing Bond Amounts .....	40-7.011(5) .....	800.15.
Personal Bonds Secured by Letters of Credit ..	40-7.011(6)(C)2. ....	800.21(b)(2).
Definition for "Parent Corporation" .....	40-7.011(6)(D)1.F. ....	800.23(a).
Self-Bonding .....	40-7.011(6)(D)2., (6)(D)2.B., (6)(D)2.D.(I) through (III), and (6)(D)3., and (6)(D)6..	800.23(b), (b)(2), (b)(4)(i) through (iii), (c), and (f).
Criteria and schedule for release of reclamation liability.	40-7.021(2)(B)5. and 6. ....	800.40(c).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

*C. 10 CSR 40-7.011 Bond Requirements*

1. 10 CSR 40-7.011(1) Definitions

a. Missouri proposed to revise its definition for personal bond in paragraph (1)(C) to read as follows:

Personal bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by negotiable certificates of deposit or irrevocable letters of credit which may be drawn upon by the director if reclamation is not completed or if the permit is revoked prior to completion of reclamation.

The Federal definition for collateral bond found at 30 CFR 800.15(b) means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by one or more of the following: A cash account; negotiable bonds of the United States, a State, or municipality; negotiable certificates of deposit; irrevocable letters of credit; a perfected, first-lien security interest in real property; or other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service. The Federal regulation at 30 CFR 800.50 provides for the regulatory authority to forfeit bonds and use funds collected from bond forfeiture to complete the reclamation plan or portion thereof, on the permit area or increment to which bond coverage applies.

Missouri has chosen to limit the vehicles that support an indemnity agreement to negotiable certificates of deposit and irrevocable letters of credit. Missouri also provides that the director may use funds from personal bonds if reclamation is not completed or if the permit is revoked before the completion

of reclamation. We are, therefore, approving Missouri's definition for personal bond because it is no less effective than the above Federal regulations.

b. Missouri proposed to revise its definition for Phase I bond in paragraph (1)(D) to read as follows:

Phase I bond means performance bond conditioned on the release of sixty percent (60%) of the bond upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan.

There is no Federal definition for Phase I bond, however, the Federal regulation at 30 CFR 800.40(c) states that the regulatory authority may release all or part of the bond for the entire permit area or incremental area if the regulatory authority is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with specific schedules for reclamation of Phases I, II, and III. The schedule for Phase I reclamation, found at 30 CFR 800.40(c)(1), involves the operator completing the backfilling, re-grading (which may include the replacement of topsoil), and drainage control of a bonded area in accordance with the approved reclamation plan. When this schedule is complete, the regulatory authority may release 60 percent of the bond. We are approving Missouri's definition for Phase I bond because it is no less effective than the Federal regulation at 30 CFR 800.40(c)(1).

2. 10 CSR 40-7.011(6) Types of Bonds

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

Missouri proposed to revise paragraph (6)(A)8. regarding surety bonds. This paragraph inappropriately refers to a "bank" or "bank charter" when the subject matter of this paragraph pertains

to a surety company. Missouri proposed to delete the language that refers to a "bank" or "bank charter." Also, Missouri proposed to correct the incorrect reference citation, 10 CSR 40-7.031(A)(6), so that it correctly reads 10 CSR 40-7.031(1)(F)2. We are approving Missouri's revisions regarding the deletion of the terms "bank" and "bank charter" because they are inappropriately included in this paragraph that pertains only to surety companies. We are also approving the correction of the incorrect reference citation.

Finally, Missouri proposed that, upon the incapacity of the surety because of bankruptcy or insolvency, or suspension or revocation of its license, the permittee must promptly notify the director. Upon this notification, the director must issue a notice of violation (NOV) against the operator who is without bond coverage specifying that the operator must replace the bond in no more than 90 days. If the NOV is not abated in accordance with the schedule, a cessation order must be issued requiring immediate compliance with 10 CSR 40-3.150(4), Cessation of Operations—Permanent.

The Federal regulation at 30 CFR 800.16(e)(2) sets forth a requirement that upon the incapacity of a bank or surety company by reason of bankruptcy or insolvency, or suspension or revocation of a charter or license, the permittee must be deemed to be without bond coverage and must promptly notify the regulatory authority. When the regulatory authority receives the notification, it must notify the operator in writing to replace the bond in a period not to exceed 90 days. If the operator does not provide an adequate bond, the operator must cease mining and immediately begin reclamation operations in accordance with the approved reclamation plan.

We are approving the above revision because it is no less effective than the Federal regulation at 30 CFR 800.16(e)(2).

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

i. Missouri proposed to revise paragraphs (6)(B)2., 4., 6., and 7. regarding personal bonds secured by certificates of deposit. Paragraph (6)(B)4. refers to banks or savings and loan companies issuing the certificates of deposit, while paragraphs (6)(B)2., 6., and 7. only refer to banks issuing certificates of deposit. Missouri proposed to revise these paragraphs to make them consistent with paragraph (6)(B)4. Missouri also proposed to remove the term “Federal Savings and Loan Insurance Corporation (FSLIC)” from this paragraph because the FSLIC was abolished and the Federal Deposit Insurance Corporation (FDIC) now insures savings and loan companies. We are approving these revisions because the Federal regulation at 30 CFR 800.21(a)(4) implies that banks or savings and loan companies are acceptable sources for certificates of deposit by its reference to certificates of deposits insured by the FDIC or the FSLIC.

ii. Missouri proposed to revise paragraph (6)(B)4. by adding that permittees may not submit, from a single bank or savings and loan company, certificates of deposit totaling more than the maximum insurable amount as determined by the FDIC. We are approving this revision because the Federal regulation at 30 CFR 800.21(a)(4) contains the provision that an individual certificate of deposit cannot be accepted in an amount that is greater than the maximum insurable amount as determined by the FDIC.

iii. Missouri proposed to revise paragraph (6)(B)7. by changing the number of days that an operator has for replacing bond coverage from 60 to 90 days if the operator is without bond because of a bank’s or savings and loan company’s insolvency or bankruptcy or suspension or revocation of its charter or license. Missouri also proposed to add a requirement to paragraph (6)(B)7. that prohibits an operator from resuming mining operations until after the director has determined that an acceptable bond has been posted. We are approving the revision because the Federal regulation at 30 CFR 800.16(e) provides that the operator must replace the bond in a period not to exceed 90 days and that the operator must not resume mining operations until the regulatory authority has determined that an acceptable bond has been posted.

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

i. Missouri proposed to revise paragraph (6)(C)4. as follows:

The letter of credit shall be issued by a bank authorized to do business in the United States. If the issuing bank is located in another state, a bank located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

The Federal regulation at 30 CFR 800.21(b)(1) requires letters of credit to be issued by a bank organized or authorized to do business in the United States. Therefore, we are approving Missouri’s proposed revision because it is no less effective than the Federal regulation.

ii. Missouri proposed to revise paragraph (6)(C)9. to require the bond to have a mechanism by which a bank must give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the bank or permittee or alleging any violations which would result in the suspension or revocation of the bank’s charter or license to do business. Missouri also proposed that upon the incapacity of any bank by reason of insolvency or bankruptcy or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond and the director must, upon notification of the incapacity, issue an NOV to the operator who is without bond. The NOV must specify a period not to exceed 90 days in which to replace the bond coverage. In addition, if the NOV is not abated in accordance with the abatement schedule, a cessation order must be issued requiring the immediate compliance with 10 CSR 40–3.150(4) Cessation of Operations—Permanent and the mining operations must not resume until the director has determined that an acceptable bond has been posted.

The Federal regulation at 30 CFR 800.16(e)(1) requires the bond to have a mechanism for a bank or surety company to promptly notify the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the bank, surety company, or permittee or alleging any violations which would result in the suspension or revocation of the bank’s or surety company’s charter or license to do business. The Federal regulation at 30 CFR 800.16(e)(2) deems the permittee to be without bond coverage upon the incapacity of the bank or surety company by reason of insolvency or bankruptcy or suspension or revocation of its charter or license

and requires the permittee to promptly notify the regulatory authority of the incapacity. The regulatory authority upon this notification must notify, in writing, the operator who is without bond coverage, to replace bond coverage in a period not to exceed 90 days. If an adequate bond is not posted, the operator must (1) cease mining, (2) comply with 30 CFR 816.132 or 30 CFR 817.132, Cessation of Operations: Permanent, and (3) immediately begin reclamation operations in accordance with the reclamation plan.

We are approving Missouri’s revisions because they are no less effective than the above Federal regulations.

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

i. Missouri proposed to revise paragraph (6)(D)8. by changing the time period for replacing the bond from 60 days to 90 days if the financial conditions of the permittee or third-party guarantors change so that they no longer satisfy the requirements for being able to post self bonds. Missouri also proposed that if the bond is not replaced in accordance with the schedule set by the director, the operator must immediately begin to conduct reclamation operations in accordance with the reclamation plan.

The Federal regulation at 30 CFR 800.23(g) provides that if the financial conditions of the applicant, parent, or non-parent corporate guarantor change so that the criteria for being able to post self bonds are not met, the permittee must immediately notify the regulatory authority and must post an alternative form of bond within 90 days. If the permittee does not post the alternate bond, the operator must cease mining operations and immediately begin to conduct reclamation operations in accordance with the reclamation plan.

We are approving Missouri’s revision because it is no less effective than the Federal regulation at 30 CFR 800.23(g).

*3. 10 CSR 40–7.011(7) Replacement of Bonds*

Missouri proposed to revise paragraph (7)(A). This paragraph allows permittees to replace existing surety or personal bonds with other surety or personal bonds. Missouri proposed to add self bonds so that permittees may replace existing surety, personal or self bonds with other surety, personal or self bonds.

The Federal regulation at 30 CFR 800.30(a) provides that the regulatory authority may allow a permittee to replace existing bonds with other bonds that provide adequate coverage.

We are approving Missouri's revision because it is no less effective than the Federal regulation at 30 CFR 800.30(a).

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

1. Missouri proposed to revise paragraphs (2) and (2)(E) Paragraph (2) reads as follows:

(2) Criteria and Schedule for Release of Reclamation Liability. Except as described in subsection (2)(E), reclamation liability shall be released in three (3) phases.

Missouri proposed to delete the phrase, "Except as described in subsection (2)(E)," so that revised paragraph (2) reads as follows:

(2) Criteria and Schedule for Release of Reclamation Liability. Reclamation liability shall be released in three (3) phases.

Paragraph (2)(E) reads as follows:

(E) All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased. No bonding shall be released from undisturbed areas before Phase I liability applying to adjacent disturbed lands is released, except that the commission may approve a separate bond release from an area of undisturbed land if the area is not excessively small and can be separated from areas that have been or will be disturbed by a distinct boundary, which can be easily located in the field and which is not so irregular as to make record keeping unusually difficult. The permit shall terminate on all areas where all bonds have been released.

Missouri proposed to delete all the language in this paragraph except the last sentence, so that revised paragraph (2)(E) reads as follows:

(E) The permit shall terminate on all areas where all bonds have been released.

The Federal regulations that pertain to the requirement for releasing Phase I, II, and III performance bonds are found at 30 CFR 800.40(c), however, there are no direct Federal counterpart regulations to 10 CSR 40-7.021(2) and (2)(E). The language being removed from 10 CSR 40-7.021(2) references 10 CSR 40-7.021(2)(E) and both of these paragraphs pertain to the full release of bond, under certain conditions, from undisturbed areas where further disturbance from surface mining have ceased. The Federal regulation at 30 CFR 800.15(c) allows bond adjustments which involve undisturbed land and states that these adjustments are not considered bond release subject to the procedures of 30 CFR 800.40. We are approving the removal of the language from 10 CSR 40-7.021(2) and (2)(E) because the removal of this language is not inconsistent with and will not render

Missouri's regulations less effective than the Federal regulations.

2. Missouri proposed to revise paragraph (2)(A) regarding the criteria for release of Phase I liability. Paragraph (2)(A) reads as follows:

(A) An area shall qualify for release of Phase I liability upon completion of backfilling and grading, topsoiling, drainage control and initial seeding of the disturbed area. Phase I bond shall be retained on unreclaimed temporary structures, such as roads, siltation structures, diversions and stockpiles, on an acre for acre basis.

Missouri proposed to delete the phrase, "on an acre for acre basis," from the last sentence of this paragraph.

The Federal counterpart regulation is found at 30 CFR 800.40(c)(1) and provides that Phase I reclamation is complete after the operator completes the backfilling, regrading (which may include the replacement of topsoil), and drainage control of the bonded area in accordance with the approved reclamation plan. We are approving the deletion of the above phrase from Missouri's regulation because it will not render the State regulation less effective than the Federal counterpart regulation.

3. Missouri proposed to revise paragraph (2)(B)4. regarding the criteria for qualifying for release of Phase II liability to read as follows:

4. A plan for achieving Phase III release has been approved for the area requested for release and the plan has been incorporated into the permit;

There is no direct Federal counterpart regulation for paragraph (2)(B)4. However, the Federal regulation at 30 CFR 784.13(a) requires each application to contain a plan for the reclamation of the lands within the proposed permit area. Missouri's proposed regulation is no less effective than the above Federal regulations and we are approving it.

4. Missouri proposed to revise paragraph (2)(D) regarding bond release by deleting the language and replacing it with new language, and by adding new paragraphs 1. through 3. to read as follows:

(D) Bonds release.

1. Phase I—After the operator completes the backfilling, grading, topsoiling, drainage control, and initial seeding of the disturbed area in accordance with the approved reclamation plan, the director shall release 60 percent of the bond for the applicable area.

2. Phase II—After vegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, the director shall release an additional amount of bond. When determining the amount of bond to be released after successful vegetation has been established, the director shall retain that amount of bond for the vegetated area which would be

sufficient to cover the cost of reestablishing vegetation if completed by a third party and for the period specified for in 10 CSR 40-7.021(1)(B) for reestablishing vegetation.

3. Phase III—After the operator has completed successfully all surface coal mining and reclamation activities, the director shall release the remaining portion of the bond, but not before the expiration period specified for the period of liability in 10 CSR 40-7.021(1)(B).

The Federal counterpart regulations are found at 30 CFR 800.40(c)(1) through (c)(3) and set forth the criteria for releasing bond based upon the three phases of reclamation. We are approving Missouri's proposed revision because it is substantively the same as the Federal counterpart regulations.

*E. 10 CSR 40-7.031 Permit Revocation, Bond Forfeiture and Authorization To Expend Reclamation Fund Monies*

Missouri proposed to revise paragraph (2) regarding the procedures for permit suspension or revocation and paragraph (4) regarding declaration of permit revocation. More specifically, Missouri proposed to revise paragraphs (2)(E)1. and (4), and to delete paragraphs (2)(E)2.C and D in order to remove provisions related to the Missouri Coal Mine Land Reclamation Fund. Missouri also proposed to add new paragraphs (4)(A) through (B)2. to specify what monies the director may use for reclamation purposes for bonds forfeited before January 1, 2006, and for those forfeited on or after January 1, 2006.

The Federal regulations at 30 CFR 800.11(a) through (d) set forth the provisions for a permit applicant to file, with the regulatory authority, a bond or bonds for performance that is conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan. The regulations also include a "full cost bond" bonding system. The Federal regulation at 30 CFR 800.11(e) provides that we may approve an alternative bonding system as part of a State program. The previously approved Missouri Coal Mine Land Reclamation Fund is a "bond pool" fund that is part of Missouri's alternative bonding system and is used to complete reclamation on permit sites for which the permits have been revoked and the associated bonds have been forfeited. Missouri proposed to terminate its alternative bonding system and to adopt a "full cost bond" bonding system effective January 1, 2006. With this transition to a "full cost bond" bonding system, Missouri proposed that only permit sites whose bonds have been forfeited before January 1, 2006, are eligible to have

monies expended from the “bond pool” fund for the purpose of completing reclamation of the sites. Missouri also proposed that permit sites whose bonds have been forfeited on or after January 1, 2006, are eligible to have monies expended from the forfeited “full cost bonds” for the purpose of completing reclamation of the sites. We are approving Missouri’s revisions as they are no less effective than the Federal regulations because permit sites under the alternative bonding system and the “full cost bond” bonding system have funds available for reclamation, if required.

Finally, Missouri proposed to add new paragraphs 4)(B)1. and 2. to read as follows:

1. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete or authorize completion of reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

2. In the event the amount of performance bond forfeited is more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.

The Federal counterpart regulations are found at 30 CFR 800.50(d)(1) and (2). We are approving Missouri’s revisions because they are substantively identical to the Federal regulations.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the emergency rule amendment (70 FR 71425), but did not receive any.

##### *Federal Agency Comments*

On November 10, 2005, and December 13, 2005, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the emergency rule amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record Nos. MO–665.1 and MO–665.9). We did not receive any comments.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to

make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the emergency rule amendment.

On November 10, 2005, and December 13, 2005, under 30 CFR 732.17(h)(11)(i), we requested comments on the emergency rule amendment from EPA (Administrative Record Nos. MO–665.1 and MO–665.9). EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 10, 2005, and December 13, 2005, we requested comments on Missouri’s emergency rule amendment (Administrative Record No. MO–665.1 and MO–665.9), but neither responded to our request.

#### V. OSM’s Decision

Based on the above findings, we approve the amendment Missouri sent us on October 11, 2006.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program to include the original amendment submission date and the date of final publication for this rulemaking.

#### VI. Procedural Determinations

##### *Administrative Procedure Act*

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. The provisions being approved in this rulemaking are substantively identical to those approved in the emergency rulemaking on June 8, 2006. At that time, notice and an opportunity to comment were provided to members of the public and no comments were received. Consequently, an additional comment period on the same provisions is viewed as unnecessary. In addition, we find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of

SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

##### *Executive Order 12630—Takings*

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

##### *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 regulations did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 2, 2007.

**Ervin J. Barchenger,**  
*Acting Regional Director, Mid-Continent Region.*

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

**PART 925—MISSOURI**

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

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

■ 2. Section 925.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
October 11, 2006 .....	March 12, 2007 .....	10 CSR 40–7.011(1)(C) and (D), (2)(A) and (B), (3)(C), (4) and (5), (6)(A)6., 8. and 9., (6)(B)1., 2., and 4. through 7., (6)(C)1. through 4., 8. and 9., (6)(D)1.F., 2., 2.B., 2.D.(I) through (III), 3., 5.C., 6., 8., and (7)(A); 10 CSR 40–7.021(1)(A), (2), (2)(A), (2)(B)3. through 6., (2)(C)2., (2)(D) and (E); 10 CSR 40–7.031(2)(E)1. and 2., (2)(E)2.C. & D., (3)(C), and (4) through (4)(B)2.; and 10 CSR 40–7.041.

[FR Doc. E7-4416 Filed 3-9-07; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 230

[Docket No. 070302051-7051-01; I.D. 021607D]

#### Whaling Provisions; Aboriginal Subsistence Whaling Quotas

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Rule.

**SUMMARY:** NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 2002 Special Meeting of the International Whaling Commission (IWC). For 2007, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

**DATES:** Effective March 12, 2007.

**ADDRESSES:** Office of International Affairs, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Cheri McCarty, (301) 713-9090.

**SUPPLEMENTARY INFORMATION:** Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 2002 Special Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead

whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 2003 through 2007, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1998 through 2002 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2006 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2007 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2007 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

#### Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: March 6, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. E7-4443 Filed 3-9-07; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 061109296-7009-02; I.D. 030607B]

#### Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that the Commonwealth of Virginia is transferring 150,000 lb (68,039 kg) of commercial bluefish quota to the State of New York from its 2007 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective March 7, 2007 through December 31, 2007, unless NMFS publishes a superseding document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 150,000 lb (68,039 kg) of its 2007 commercial quota to New York. The Regional Administrator has determined that the