



# Federal Register

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**Friday,  
August 22, 2003**

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**Part V**

## **Department of the Interior**

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**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Part 925  
Substituted Federal Enforcement of  
Portions of Missouri's Permanent  
Regulatory Program and Findings on the  
Status of Missouri's Permanent Regulatory  
Program; Final Rule and Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925****Substituted Federal Enforcement of Portions of Missouri's Permanent Regulatory Program and Findings on the Status of Missouri's Permanent Regulatory Program**

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

**ACTION:** Final rule.

**SUMMARY:** On November 21, 1980, the Secretary of the Interior (the Secretary) conditionally approved the Missouri permanent regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On August 4, 2003, we, the Office of Surface Mining Reclamation and Enforcement (OSM), notified the Governor of Missouri that serious problems exist that are adversely affecting implementation and enforcement of the Missouri program. The Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) is the regulatory authority responsible for implementing and enforcing the Missouri program. We also told the Governor that because of the severity of these problems, we must immediately substitute Federal enforcement for portions of the Missouri program in the areas of inspection, enforcement, permitting, and bonding activities. Therefore, in accordance with the provisions of our regulations, we are instituting direct Federal enforcement for those portions of the Missouri program that the MLRP is not adequately implementing or enforcing.

Because we believe that it is preferable that States hold the primary responsibility for regulating surface coal mining and reclamation operations, we will provide the MLRP with assistance and guidance, as necessary, to resolve the issues and to regain full authority for those portions of the Missouri program that are not being adequately implemented or enforced. This document also sets forth our findings regarding this action and the status of those portions of the Missouri program that the MLRP will continue to administer.

**EFFECTIVE DATE:** August 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois

62002. Telephone: (618) 463-6460. Internet address: [jcoleman@osmre.gov](mailto:jcoleman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Missouri Program
- II. OSM's Findings on the Status of the Missouri Program
- III. OSM's Decision
- IV. OSM's Actions and State Remedial Actions
- V. 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 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.

The Abandoned Mine Land Reclamation (AMLR) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. Section 405(c) of the Act also requires States to have an approved State regulatory program before the Secretary can approve a State program for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Missouri plan on January 29, 1982. You can find background information on the Missouri plan, including the Secretary's findings, the disposition of

comments, and the approval of the plan in the January 29, 1982, **Federal Register** (47 FR 4253). You can find later actions concerning the Missouri plan and amendments to the plan at 30 CFR 925.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. We approved Missouri's assumption of the AMLR emergency program on June 24, 1998. You can find background information, including our findings, the disposition of comments, and the approval of the Missouri AMLR emergency program in the June 24, 1998, **Federal Register** (63 FR 34277).

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. HB 6 did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO-664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO-664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the AMLR program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it

would try to gain full program funding from the Missouri Legislature next year.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for surface coal mining and reclamation regulatory issues (Administrative Record No. MO-664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO-664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri 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). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities.

All Missouri Administrative Record documents from MO-664 (June 19, 2003) through MO-664.4 (August 4, 2003) are being considered in this rulemaking.

## II. OSM's Findings on the Status of the Missouri Program

On the basis of the record described above, we are making the following findings in accordance with sections 504 and 521(b) of SMCRA and 30 CFR 733.12.

### A. Inspection and Enforcement

The MLRP currently has approximately 46 active and inactive mine sites to inspect. By State law, each active site requires four complete and eight partial inspections per year. Inactive sites require four complete inspections per year and sufficient

partial inspections to ensure compliance with the State program. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including inspection and enforcement staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its inspection and enforcement provisions in the Code of State Regulations (CSR) at 10 CSR 40-8.030 or its civil and criminal penalty provisions at 10 CSR 40-8.040 and 40-8.045. Thus, the MLRP cannot effectively implement, maintain, or enforce the inspection and enforcement aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects of the program.

### B. Permitting

The MLRP currently has one new permit and several permit revisions that are pending review for possible approval. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including permitting staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its permitting provisions at 10 CSR 40-6.010 through 40-6.120. Thus, the MLRP cannot effectively implement, maintain, or enforce this permitting aspect of the approved Missouri program and has not demonstrated that it intends to administer this aspect of the program.

### C. Bonding

#### 1. Performance Bond Requirements

On July 2, 2003, the MLRP told us that effective July 18, 2003, existing regulatory program staff, with the exception of bond forfeiture reclamation staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its general bonding provisions at 10 CSR 40-7.011, bond release provisions at 10 CSR 40-7.021, or bond forfeiture provisions at 10 CSR 40-7.031, with the exception of 10 CSR 40-7.031(3) concerning bond forfeiture reclamation activities. Thus, the MLRP cannot effectively implement, maintain, or enforce all of the bonding aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects, with the exception of bond forfeiture reclamation activities.

#### 2. Bond Forfeiture Reclamation Activities

On July 2, 2003, Missouri told us that the Missouri Legislature appropriated funds for bond forfeiture reclamation. Missouri indicated that it would use the funds to provide four full-time regulatory program staff to implement this activity. Missouri had approximately 33 sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002. In our 2002 annual evaluation report for Missouri, we found that the State took several actions to improve the effectiveness of its bond forfeiture reclamation. The MLRP developed a work plan for completing reclamation at several forfeiture sites and instituted changes in its internal procedures for handling forfeiture projects. Therefore, we find that Missouri has the program staff necessary to implement, maintain, and enforce the bond forfeiture reclamation requirements of the approved Missouri program.

## III. OSM's Decision

Having reviewed and considered all available information on the MLRP's capability and intent to implement, maintain, and enforce the Missouri program, we made the following determinations.

Missouri has indicated its intent to take steps to resolve the funding and staffing issues for the entire program. For this reason, we find that, at this time, withdrawing approval of Missouri's program is not justified.

We determined that the MLRP does have sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We also determined that the MLRP does not have adequate staff and resources to implement all other aspects of its program. To ensure that the adverse effects of surface mining are controlled as required under SMCRA, we must assume the responsibility for enforcement of parts of the Missouri program until the MLRP is able to administer all segments of its program.

We will directly enforce the inspection and enforcement provisions, the permitting provisions, and the bonding and insurance provisions, with the exception of bond forfeiture reclamation activities.

We have developed a process by which the MLRP could resume full authority for all aspects of the approved Missouri program. Failure by the MLRP to seek and obtain full authority for the Missouri program or failure by the MLRP to perform satisfactorily in the areas in which it retains enforcement

authority will result in additional Federal action.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a)(3) of SMCRA requires that a State's program demonstrate that the State regulatory authority has sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Effective July 18, 2003, Missouri no longer had sufficient administrative and technical personnel or adequate funding to implement, maintain, and enforce its approved program. Therefore, Federal enforcement of Missouri's program must be made effective immediately to ensure the protection of the public through effective control of surface coal mining and reclamation operations in the State.

#### IV. OSM Actions and State Remedial Actions

##### A. Direct Federal Enforcement of the Missouri Program

Starting on August 22, 2003, we will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the MLRP to implement the Missouri program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before the effective date of this notice, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. With respect to State bond forfeiture actions initiated before the effective date of this notice, the MLRP will have authority to perform bond forfeiture reclamation activities.

##### 1. Inspection and enforcement

a. We will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267,

1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before the effective date of this decision, we will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

b. We will issue, modify, enforce, and terminate notices of violation, cessation orders, and show cause orders in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1257, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before the effective date of this decision, we will reinspect the site and if the operator has not abated the violation by the abatement date set in the State-issued notice of violation, we will take appropriate enforcement action. We will issue a notice of violation for any violation observed by us that has not been previously cited by the MLRP. We will issue a cessation order for any condition or practice that creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

c. We will impose civil and criminal sanctions, as appropriate, for violations of the approved Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 845, and 43 CFR part 4.

d. We will promptly inform the MLRP of the results of all follow-up inspections conducted and of enforcement actions taken that pertain to enforcement actions initiated by the MLRP before the effective date of this decision.

e. Administrative and judicial review of our enforcement actions will be in accordance with 43 CFR part 4.

##### 2. Permitting

a. We will review all new applications and issue all new permits, permit revisions, permit renewals, transfer and assignment or sale of permit rights for all surface coal mining and reclamation operations in accordance with the approved Missouri program at sections 444.815 through 444.825, 444.835 through 444.845, and 444.850 of the Missouri Surface Coal Mining Law (MSCML) and 10 CSR 40-6.010 through 40-6.120. This includes pending permit actions for which the MLRP has not made a final decision.

b. Permit fees are required in accordance with section 444.820.1 of MSCML and 10 CSR 40-6.010(6). The fees for all new permitting actions must be submitted to and made payable to OSM.

c. Administrative and judicial review of our permit decisions will be in accordance with sections 525 and 526 of SMCRA (30 U.S.C. 1275 and 1276), 30 CFR part 775, and 43 CFR part 4.

##### 3. Bonding

a. We will determine the amount of the performance bonds for new permitting actions in accordance with section 509 of SMCRA and 30 CFR part 800.

b. We will maintain the amount of the performance bonds for existing permits in accordance with the Missouri program at section 444.830 of MSCML and 10 CSR 40-7.011.

c. We will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40-7.021. For existing bonds, we will make the required determinations for the amount of the bond to be released and submit the determinations to the MLRP for release.

d. New performance bonds must be made payable to the "United States of America and State of Missouri," and they must be submitted to OSM.

e. Administrative and judicial review of our performance bond determinations will be in accordance with 43 CFR part 4.

##### B. State Remedial Actions

To demonstrate its intent and capability to fully implement the Missouri program as approved by the Secretary, we will require the MLRP to complete the following remedial actions. Failure of the MLRP to accomplish these remedial measures could lead to our recommending to the Secretary that approval of the State program be withdrawn.

1. By August 22, 2003, the MLRP must submit to us a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

2. In accordance with the requirements of the approved Missouri program, the MLRP must complete administrative disposition of all enforcement actions that were initiated before the effective date of this decision.

3. Not later than 30 days from the effective date of this decision, the MLRP must submit to us a plan to reassume full authority for the Missouri program. At a minimum, the proposal must

provide specific and adequate provisions that address the following problems:

a. *Funding*: The proposal must demonstrate to our satisfaction a commitment to fully fund the Missouri program.

b. *Staffing*: The proposal must demonstrate to our satisfaction a commitment to hire a sufficient number of qualified personnel to comply with all inspection and enforcement, permitting, and bonding requirements of the Missouri program.

c. *Adherence to Approved Program*: The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure us that the MLRP will be in full compliance at all times with the provisions of the Missouri program.

4. Starting three months after the effective date of this decision, the MLRP must submit to us a report once every three months on its progress in obtaining full funding for the Missouri program.

5. Effective September 8, 2003, the MLRP must take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are made secure and to supply copies of all documents to us upon request.

### C. Resumption of State Authority

In order to resume regulatory authority over any portion of the inspection and enforcement, permitting, and bonding aspects of the Missouri program, the MLRP must formally petition us. We will entertain such a petition upon completion of the actions listed above under "State Remedial Actions."

Before making a decision to allow the MLRP to resume regulatory authority over any portion of the inspection and enforcement, permitting, or bonding operations, we will schedule a public comment period and hold a public hearing as outlined under 30 CFR 925.19. On the basis of the information available to us, we will determine if the MLRP will be allowed to resume regulatory authority over the Missouri program.

### D. 30 CFR 733 Action

We will publish any additional findings and decisions on this action in the **Federal Register** and will amend 30 CFR part 925 accordingly. A notice announcing a public comment period and opportunity for a hearing on Missouri's implementation of its program and our substitution of Federal enforcement may be found elsewhere in this edition of the **Federal Register**.

### E. Funding

We have decided that we will not provide additional grant funds to the MLRP for initiating new projects under the approved Missouri AMLR program under Title IV of SMCRA. We will review the status of any uninitiated projects that are currently funded under one or more AMLR construction grants as well as any high-priority proposed projects and take action as appropriate. Also, Missouri currently administers for us the AML emergency program in the State. We will continue to fund this program, as needed.

Because the MLRP's regulatory authority and responsibilities are being modified, funding under future administration and enforcement grants for implementation of the Missouri program must reflect actual regulatory authority responsibilities. The MLRP may submit an application for a new administration and enforcement grant based on its modified responsibilities.

### V. 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 the substitution of Federal enforcement for portions of Missouri's permanent regulatory program 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 rule is not expected to result in additional costs to the regulated industry.

#### *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 rule is not expected to result in additional costs to the regulated industry.

#### *Unfunded Mandates*

The substitution of Federal enforcement for portions of Missouri's permanent regulatory program 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 nature of the action being taken.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 15, 2003.

**Rebecca W. Watson,**

*Assistant Secretary, Land and Minerals Management.*

■ 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. Add section 925.17 to read as follows:

#### **§ 925.17 Direct Federal enforcement of the Missouri program.**

Starting on August 22, 2003, OSM will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) to implement the Missouri regulatory program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before August 22, 2003, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. With respect to bond forfeiture actions initiated before August 22, 2003, the MLRP will have authority to perform bond forfeiture reclamation activities.

(a) OSM will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, we will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

(b) OSM will issue, modify, enforce, and terminate notices of violation, cessation orders, and show cause orders for violations of the approved Missouri program, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1257, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, we will reinspect the site and if the operator has not abated the violation by the

abatement date set in the State-issued notice of violation, we will take appropriate enforcement action. We will issue a notice of violation for any violation observed by us that has not been previously cited by the MLRP. We will issue a cessation order for any condition or practice that creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) OSM will impose civil and criminal sanctions, as appropriate, for violations of the Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 845, and 43 CFR part 4.

(d) OSM will promptly inform the MLRP of the results of all follow-up inspections conducted and of enforcement actions taken that pertain to enforcement actions initiated by the MLRP before August 22, 2003.

(e) OSM will review all new applications and issue all new permits, permit revisions, permit renewals, transfer and assignment or sale of permit rights for all surface coal mining and reclamation operations in accordance with the approved Missouri program at sections 444.815 through 444.825, 444.835 through 444.845, and 444.850 of the Missouri Surface Coal Mining Law (MSCML) and 10 CSR 40–6.010 through 40–6.120. This includes pending permit actions for which the MLRP has not made a final decision. Administrative and judicial review will be in accordance with sections 525 and 526 of SMCRA (30 U.S.C. 1275 and 1276), 30 CFR part 775, and 43 CFR part 4.

(f) Permit fees are required in accordance with section 444.820.1 of MSCML and 10 CSR 40–6.010(6). The fees for all new permitting actions must be submitted to and made payable to OSM.

(g) OSM will determine the amount of the performance bonds for new permitting actions in accordance with section 509 of SMCRA and 30 CFR part 800.

(h) OSM will maintain the amount of the performance bonds for existing permits in accordance with the Missouri program at section 444.830 of MSCML and 10 CSR 40–7.011.

(i) OSM will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40–7.021. For existing bonds, we will make the required determinations

for the amount of the bond to be released and submit the determinations to the MLRP for release.

(j) Performance bonds must be made payable to the "United States of America and State of Missouri," and they must be submitted to OSM.

(k) Administrative and judicial review of OSM's enforcement actions, permitting decisions, and performance bond determinations will be in accordance with 43 CFR part 4.

■ 3. Add section 925.18 to read as follows:

**§ 925.18 State remedial actions.**

As a prerequisite to the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) reassuming authority to implement the provisions of the Missouri program that are being directly enforced by OSM, as specified under 30 CFR 936.17, the MLRP must complete the remedial measures specified below to demonstrate its intent and capability to fully implement the Missouri program.

(a) By August 22, 2003, the MLRP must submit to OSM a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

(b) In accordance with the requirements of the approved Missouri program, the MLRP must complete administrative disposition of all

enforcement actions that were initiated before the effective date of this decision.

(c) Not later than September 22, 2003, the MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address the following problems:

(1) *Funding*: The proposal must demonstrate to the satisfaction of OSM a commitment to fully fund the Missouri program.

(2) *Staffing*: The proposal must demonstrate to the satisfaction of OSM a commitment to hire a sufficient number of qualified personnel to comply with all inspection and enforcement, permitting, and bonding requirements of the approved Missouri program.

(3) *Adherence to Approved Program*: The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure OSM that the MLRP will be in full compliance at all times with the provisions of the Missouri program.

(d) Starting November 20, 2003, the MLRP must submit to OSM a report once every three months on its progress in obtaining full funding for the Missouri program.

(e) Effective September 8, 2003, the MLRP must take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are

made secure and to supply copies of all documents to OSM upon request.

■ 4. Add § 925.19 to read as follows:

**§ 925.19 Termination of Federal enforcement of the Missouri program.**

(a) OSM will consider returning to the MLRP the authority suspended under 30 CFR 925.17 provided the following requirements have been met:

(1) The MLRP accomplished to the satisfaction of OSM all remedial actions specified under 30 CFR 925.18.

(2) The MLRP petitioned OSM in writing to consider returning authority to the State.

(b) Upon satisfaction of the requirements specified in paragraph (a) of this section, OSM will schedule a public comment period and hearing on the MLRP's request.

(c) Following the close of the hearing and the comment period, OSM will announce in the **Federal Register** its decision to grant in whole or in part, or to deny the MLRP's request.

(d) Following OSM's decision to grant, in part, or to deny the MLRP's request, we will publish in the **Federal Register** further actions the MLRP will be required to take and the timeframes for taking such actions before OSM will consider a second request from the MLRP to return authority to the State.

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