

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

#### § 925.16 [Amended]

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

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#### 30 CFR Part 925

[SPATS No. MO–025–FOR]

#### Missouri Regulatory Program

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

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

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

**EFFECTIVE DATE:** May 28, 1996.

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

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Missouri Program

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

#### II. Submission of the Proposed Amendment

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

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

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

#### III. Director's Findings

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

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

**1. 10 CSR 40-3.120/3.270(6)(B)—  
Specific Standards for Postmining Land  
Uses**

The required amendment at 30 CFR 925.16(p)(6) requires Missouri to amend its program at 10 CSR 40-3.120/3.270(6)(B) 2.A through H to remove the reference to the Land Reclamation Commission's June 1990 Phase III Liability Release Guidelines.

Missouri proposes to revise each land use specific revegetation success guidance document which it incorporated by reference into its regulations. Measurement, for applicable land use specific levels of ground cover, production, or stocking shall be performed in accordance with the criteria contained in the current land use specific guidelines of the Land Reclamation Commission.

Although there is not an exact counterpart Federal regulation concerning the incorporation by reference of revegetation success guidance documents, the Federal regulations at 30 CFR 816/817.116(a)(1) require a State to include its standards for success and statistically valid sampling techniques for measuring revegetation success in its approved regulatory program. Missouri is proposing to accomplish this by incorporating eight land use specific guidance documents by reference in its regulations at 10 CSR 40-3.120/3.270(6)(B). The Director finds that Missouri's proposal to include these documents by reference into its approved program is not inconsistent with the Federal regulation requirements. Accordingly, the Director is removing the required program amendment from the Missouri program as codified at 30 CFR 925.16(p)(6).

**2. Revegetation Success Guidelines**

The required amendment at 30 CFR 925.16(a) requires Missouri to amend its program to include those technical guidance procedures that the State considers acceptable for use in evaluating revegetation success.

**a. Phase III Revegetation Success  
Standards for Woodland**

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Woodland." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as Woodland pursuant to 10 CSR 40-3.120/3.270(6) and (7).

Missouri proposes that revegetation success on woodland be determined on the basis of: the general revegetation

requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of Missouri Land Reclamation Program (MLRP) for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40-3.120/3.270. Sampling procedures are to use statistically valid random sampling methods using a 90 percent statistical confidence limit. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittees for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittees can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; example of sample adequacy determination for tree/shrub stocking; statistical analysis for ground cover and tree/shrub stocking; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal

regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for woodland. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

**b. Phase III Success Standards for  
Industrial/Commercial Revegetation**

Missouri proposes to adopt a guidance document entitled "Phase III Success Standards for Industrial/Commercial Revegetation." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as industrial/commercial pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on industrial/commercial be determined on the basis of: the general revegetation requirements of the approved permit; and ground cover density. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements of 10 CSR 40-3.120/3.270. Sampling procedures are to use statistically valid random sampling methods using a 90 percent confidence interval. Ground cover is to be measured by the line-point transect method. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are

statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; statistical analysis for ground cover; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for industrial/commercial land uses. The Director finds that the guidance document is not inconsistent with and is no less effective than the Federal regulations.

#### c. Phase III Revegetation Success Standards for Cropland

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Cropland." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as cropland pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on cropland be determined on the basis of ground cover and crop production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and crop production based on the regulatory requirements of 10 CSR 40-3.120/3.270. The crop production standard is to be determined with a reference area or the use of a technical standard. Approved technical standards include the county average or target yield established by the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS). Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Manual sampling of row crops is only allowed when weather or other factors prevent mechanical harvest and must have prior approval by the director of MLRP. The guidance document also establishes a method for establishing representative test plots for use with row crop production. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; summary data

forms for sampling frames; data forms for crop production data; T-table; example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series; yield adjustments for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; procedure for manually sampling row crops; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for cropland. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

#### d. Phase III Revegetation Success Standards for Wildlife Habitat

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Wildlife Habitat." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as wildlife habitat pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on wildlife habitat be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the

data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40-3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T—table; example of sample adequacy determination for ground cover; example of sample adequacy determination for tree/shrub stocking; statistical analysis for ground cover and tree/shrub stocking; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover,

production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for wildlife habitat. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

**e. Phase III Revegetation Success Standards for Pasture and Previously Mined areas**

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Pasture and Previously Mined Areas." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as pasture and previously mined land pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on pasture and previously mined land be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Any previously mined land that was remined or redistributed and reclaimed to a land use of pasture, must achieve the same success standard for cover as land that was not previously disturbed by mining. However if the area is not reclaimed to the requirements of 10 CSR 40-3.120(6)(B), the vegetation cover shall not be less than the ground cover existing before redistribution and shall be adequate to control erosion. This ground cover standard must have been determined and incorporated into the permit prior to disturbance. There is no productivity standard for previously mined land. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and production based on the regulatory requirements of 10 CSR 40-3.120/3.270. The forage production standard is to be

determined with a reference area or a current USDA/NRCS high management target yield. Sampling procedures are to use statistically valid random sampling methods at a 90 percent statistical confidence interval. Ground cover is to be measured by the line-point transect method. Forage production is to be measured utilizing sampling frames or whole area harvest. The guidance document also establishes a method for establishing representative test plots. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fourth year after completion of last augmented seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line point transects; summary data forms for sampling frames; T-table; data form for forage crop production data harvested as baled hay; example use of sample adequacy formula for ground cover measurements and hay production measurements; statistical analysis on sampling frame data and whole release area harvesting; yield adjustments for release areas due to differing soil series; grasses of acceptable plant species for permanent ground cover on agricultural areas; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be

considered equal to the approved success standard then they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for pasture and previously mined land. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

**f. Phase II/III Revegetation Success Standards for Prime Farmland**

Missouri proposes to adopt a guidance document entitled "Phase II/III Revegetation Success Standards for Prime Farmland." This document describes the criteria and procedures for determining Phase II and III success standards for areas being restored as prime farmland pursuant to 10 CSR 40-3.120/3.270 (6) and (7) and 10 CSR 40-4.030.

Missouri proposes that revegetation success on prime farmland be determined on the basis of crop production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. Ground cover must be established following soil replacement with approved species to effectively control erosion. The guidance document sets out specific success standards and measurement frequencies for crop production based on the regulatory requirements of 10 CSR 40-3.120/3.270 and 10 CSR 40-4.030. The crop production standard is to be determined with a reference area or the use of a technical standard. Approved technical standards include the county average or target yield established by the USDA NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area.

Sampling procedures are to use statistically valid random sampling methods. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Manual sampling of row crops is only allowed when weather or other factors prevent mechanical harvest and must have prior approval by the director of MLRP. The guidance document also establishes a method for establishing

representative test plots for use with row crop production. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee cannot demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities, then the 5-year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; summary data forms for sampling frames; data forms for crop production data; T—table; example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series; yield adjustments for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; procedure for manually sampling row crops; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulation at 30 CFR 823.15 establishes the revegetation and restoration requirements for soil productivity on prime farmland.

Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for prime farmland. The Director finds that portion of the prime farmland guidance document that establishes the revegetation standards and sampling techniques is not inconsistent with and no less effective than the Federal regulations and is

approving it with the following exception.

As previously discussed, Missouri proposes in its prime farmland guidance document one option for establishing a success standard by utilizing approved technical standards including the county average or target yield established by the USDA NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. The Federal regulation at 30 CFR 823.15(b)(7) requires that reference crop yields for a given crop season are to be determined from \* \* \* (ii) the average county yields recognized by the USDA, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop. The Director finds that Missouri's proposal to utilize county averages of production is less effective than the Federal regulations because county averages would not have been adjusted by the U.S. Soil Conservation Service to remove the influence of other nonprime soils that produce the reference crop. The Director finds that portion of the prime farmland guidance document concerning Missouri's option for establishing a revegetation success standard for prime farmland soils with county averages that do not distinguish between nonprime and prime soil is less effective than the Federal regulations and is not approving its use.

**g. Phase III Revegetation Success Standards for a Recreation Land Use**

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for a Recreation land use." This document describes the criteria and procedures for determining Phase III success standards for areas being restored for a recreation land use pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success for a recreation land use be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/

3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involved augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; T—table; example of sample adequacy determination for ground cover; statistical analysis for ground cover; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be

used by the permittee to measure revegetation success for a recreation land use. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

#### h. Phase III Revegetation Success Standards for Residential Land Use

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Residential land use." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as industrial/commercial pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success for a residential land use be determined on the basis of: the general revegetation requirements of the approved permit; ground cover density; and if approved in the permit, tree and shrub stocking. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period

will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover measurements and tree/shrub counts; statistical analysis for ground cover and tree/shrub data; accepted plan species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for a residential land use. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

Based on the above findings, the Director is removing the required program amendment from the Missouri program as codified at 30 CFR 925.16(a).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

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

##### *Federal Agency Comments*

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

##### *Environmental Protection Agency (EPA)*

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

concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) 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, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MO-634). EPA did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. Since the proposed amendment would not have any effect on historic properties, OSM did not solicit comment from the SHPO or ACHP.

**V. Director's Decision**

Based on the above findings, the Director approves, with certain exceptions, the proposed amendment as submitted by Missouri on December 14, 1995.

The Director does not approve, as discussed in: finding No. 2.f, Phase II/III Revegetation Success Standards for Prime Farmland, Missouri's proposal to utilize county averages of production as one method of establishing a target yield for prime farmland. This is less effective than the Federal regulations at 30 CFR 823.15(b)(7) because the county averages would not have been adjusted by the U.S. Soil Conservation Service to remove the influence of other nonprime soils that produce the reference crop. Missouri must not use the option for utilizing a county average as a success standard for prime farmland soils unless and until it is revised consistent with the Federal regulations and approved by OSM.

The Director approves, as discussed in: finding No. 1, 10 CSR 40-3.120/3.270(6)(B) concerning Specific standards for postmining land uses; finding No. 2.a, concerning its Phase III Revegetation Success Standards for Woodland; finding No. 2.b, concerning its Phase III Success Standards for Industrial/Commercial Revegetation; finding No. 2.c, concerning its Phase III Revegetation Success Standards for Cropland; finding No. 2.d, concerning its Phase III Revegetation Success

Standards for Wildlife Habitat; finding No. 2.e, concerning its Phase III Revegetation Success Standards for Pasture and Previously Mined Areas; finding No. 2.f, concerning its Phase II/III Revegetation Success standards for Prime Farmland, with the exception noted above; finding No. 2.g, concerning its Phase III Revegetation Success Standards for a Recreation land use; finding No. 2.h, concerning its Phase III Revegetation Success Standards for Residential land use.

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

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

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

**VI. Procedural Determinations**

*Executive Order 12866*

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

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of

that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 731.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

*Unfunded Mandates*

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



## List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

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

**PART 925—MISSOURI**

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

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

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

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

\* \* \* \* \*

(u) With the exception of that portion of the Phase II/III Revegetation Success Standards for Prime Farmland, concerning the option to utilize county averages of production as one method of establishing a target yield for prime farmland, the addition of the following revegetation success guidelines: Phase III Revegetation Success Standards for Woodland; Phase III Success Standards for Industrial/Commercial Revegetation; Phase III Revegetation Success Standards for Cropland; Phase III Revegetation Success Standards for Wildlife Habitat; Phase III Revegetation Success Standards for Pasture and Previously Mined Areas; Phase II/III Revegetation Success Standards for Prime Farmland; Phase III Revegetation Success Standards for a Recreation land use; Phase III Revegetation Success Standards for Residential land use; and the revision of the rules at 10 CSR 40-3.120/3.270(6)(B) concerning specific standards for postmining land uses, as submitted to OSM on December 14, 1995, are approved effective May 28, 1996.

**§ 925.16 [Amended]**

3. Section 925.16 is amended by removing and reserving paragraphs (a) and (p)(6).

[FR Doc. 96-13263 Filed 5-24-96; 8:45 am]

BILLING CODE 4310-05-M

**30 CFR Part 936**

[SPATS No. OK-015-FOR]

**Oklahoma Abandoned Mine Land Reclamation Plan**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions and additions to its rules and to sections of the Oklahoma plan pertaining to definitions, contractor responsibility, eligible lands and waters, reclamation project objectives and priorities, project ranking, public participation, organizational structure, and coordination of reclamation with other agencies. The amendment is intended to revise the Oklahoma plan to be consistent with the corresponding Federal regulations and SMCRA, to incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: 918 581-6430.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Oklahoma Plan**

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, Federal Register (47 FR 2989). Subsequent actions concerning Oklahoma's plan and amendments to the plan can be found at 30 CFR 936.25.

**II. Submission of the Proposed Amendment**

By letter dated November 13, 1995 (Administrative Record No. OAML-63),

Oklahoma submitted a proposed amendment to its plan pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a September 26, 1994, letter from OSM in accordance with 30 CFR 884.15 (Administrative Record No. OAML-65) and at its own initiative. Oklahoma proposed to amend its administrative rules at OAC 155:15, Oklahoma Abandoned Mine Land Program, and its reclamation plan at section 884.13(c)1, Goals and Objectives; 884.13(c)2, Project Ranking and Selection; 884.13(c)3, Interagency Coordination; 884.13(c)5, Eligible Lands and Waters; 884.13(c)7, Public Participation; and 884.13(d)1, Administrative and Management Structure.

OSM announced receipt of the proposed amendment in the December 21, 1995, Federal Register (60 FR 66244), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 22, 1996.

During its review of the amendment, OSM identified concerns relating to Oklahoma's proposal to revise the administrative regulations at OAC 155.15-1-5, Eligible Lands and Water, and the Oklahoma plan at section 884.13(c)5, Eligible Lands and Water. These revisions were intended to allow expenditure of funds for reclamation of certain lands and water affected by mining after August 3, 1977, the effective date of SMCRA. OSM notified Oklahoma of the concerns by telephone on March 15, 1996, and by telefax on March 19, 1996 (Administrative Record Nos. OAML-71 and OAML-72).

Oklahoma responded in a letter dated March 21, 1996, by submitting revisions to its amendment (Administrative Record No. OAML-69).

Based upon the revisions to the proposed plan amendment submitted by Oklahoma, OSM reopened the public comment period in the April 8, 1996, Federal Register (61 FR 15435) and provided opportunity for public comment on the adequacy of the revised amendment. The public comment period closed on April 23, 1996.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive editorial changes, punctuation, grammatical, or revised cross-references and paragraph