

level quarterly installments (of \$2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2010.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed \$50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2005, over the outstanding balance of loans from the plan on January 1, 2006, with such outstanding balance to be determined immediately prior to the new \$40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, under paragraph (a)(2) of this Q&A-20, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is \$40,000, the outstanding balance on January 1, 2006, of the loan it replaces is \$33,322, and the highest outstanding balance of loans from the plan during 2005 was \$40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2006, of the loan it replaces must not exceed \$50,000 reduced by \$6,678 (the excess of the \$40,000 maximum outstanding loan balance during 2005 over the \$33,322 outstanding balance on January 1, 2006, determined immediately prior to the new loan) and, thus, must not exceed \$43,322. The sum of the new loan (\$40,000) and the outstanding balance on January 1, 2006, of the loan it replaces (\$33,322) is \$73,322. Since \$73,322 exceeds the \$43,322 limit under section 72(p)(2)(A) by \$30,000, there is a deemed distribution of \$30,000 on January 1, 2006.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to \$2,907, which is the sum of the \$2,491 originally scheduled quarterly installment payment amount under the first loan, plus \$416 (which is the amount required to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the excess of the refinanced loan over the January 1, 2006, balance of the first loan (\$40,000 minus \$33,322 equals \$6,678)), and the amount of the 4 remaining installments was equal to \$416. The refinancing would not be subject to paragraph (a)(2) of this Q&A-20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan (\$33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan) and the other of which is in the additional amount (\$6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A-20) if the terms of the refinanced loan provided for repayments to be made in level quarterly

installments (of \$2,990 each) over the next 16 quarters.

*Example 2.* (i) The facts are the same as in *Example 1*(i), except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to \$2,848 and the amount of the next 4 installments on the refinanced loan is equal to \$406. The \$2,848 amount is the sum of \$2,442 to repay the first loan by December 31, 2009 (the term of the first loan), plus \$406 (which is the amount to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the \$6,678 excess of the refinanced loan over the January 1, 2006, balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A-20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan (\$33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan), and the other of which is in the additional amount (\$6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A-20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of \$2,931 each) over the next 16 quarters.

\* \* \* \* \*

A-22: \* \* \*

(d) *Effective date for Q&A-19(b)(2) and Q&A-20.* Q&A-19(b)(2) and Q&A-20 of this section apply to assignments, pledges, and loans made on or after January 1, 2004.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: November 7, 2002.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 924

[MS-017-FOR]

#### Mississippi Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to and additions of rules about valid existing rights, roads, formal review of citations, and revegetation success standards. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

**EFFECTIVE DATE:** December 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290-7282. Internet: [aabbs@osmre.gov](mailto:aabbs@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Mississippi 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 the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the Mississippi program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

#### II. Submission of the Amendment

By letter dated September 28, 2001 (Administrative Record No. MS-0388), Mississippi sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Mississippi sent the amendment in response to our letters dated August 17, 2000, and August 23, 2000 (Administrative Record Nos. MS-0382 and MS-0381, respectively), that we

sent to Mississippi in accordance with 30 CFR 732.17(c). Mississippi also sent the amendment in response to required program amendments at 30 CFR 924.16(i) and (l). Finally, the amendment included changes made at Mississippi's own initiative.

We announced receipt of the proposed amendment in the November 2, 2001, **Federal Register** (66 FR 55611). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on December 3, 2001. Because no one requested a public hearing or meeting, we did not hold one. We received comments from one State agency.

During our review of the amendment, we identified concerns relating to the definition of "immediate mining area" and provisions concerning limited use vehicular pathways. We notified

Mississippi of these concerns by letter dated January 23, 2002 (Administrative Record No. MS-0390). By letter dated July 22, 2002, Mississippi sent us a revised amendment (Administrative Record No. MS-0394). Based upon Mississippi's revisions to its amendment, we reopened the public comment period in the September 6, 2002, **Federal Register** (67 FR 56967). The public comment period closed on September 23, 2002. We did not receive any comments.

Also during our review, we identified editorial concerns relating to Mississippi's revegetation success standards. We notified Mississippi of these concerns by telephone on September 10, 2002 (Administrative Record No. MS-0398). By letter dated September 12, 2002, Mississippi sent us revisions to its amendment (Administrative Record No. MS-0397). Because the revisions merely clarified certain provisions of Mississippi's

amendment, we did not reopen the public comment period.

**III. OSM's Findings**

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment to the Mississippi program. Any revisions that we do not discuss below are minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Mississippi's Rules That Are Substantively the Same as the Corresponding Provisions of the Federal Regulations*

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal counterpart regulation
Areas where mining is prohibited or limited .....	Section 1105 .....	30 CFR 761.11
Submission and processing of requests for valid existing rights determinations.	Section 1106 .....	30 CFR 761.16
Valid existing rights review at time of permit application review.	Section 3114 .....	30 CFR 761.17
Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.	Section 2103(b)(14), (c), (d), (e), and (f) .....	30 CFR 772.12(b)(14), (c), (d), and (e)

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

*B. Revisions to Mississippi's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

1. Section 105, Definition of "Valid Existing Rights"

Mississippi revised its definition of "valid existing rights" to closely follow the Federal definition at 30 CFR 761.5. However, Mississippi's definition of "valid existing rights" includes language in paragraph (a) specifying that valid existing rights must have been in existence on August 3, 1977, unless, subsequent to the adoption of the definition, section 53-9-71(4) of the Mississippi Surface Coal Mining and Reclamation Law is amended to delete that requirement. Mississippi's definition further provides that if section 53-9-71 of the Mississippi Surface Coal Mining and Reclamation Law is amended to delete the requirement that a right exist as of August 3, 1977, then the right must have

been in existence at the time the land came under the protection of 30 CFR 761.11, 30 U.S.C. 1272(e), Miss. Code Ann. 53-9-71, or section 1105 of the Mississippi regulations. In a letter dated September 28, 2001 (Administrative Record No. MS-0388), Mississippi explained that section 53-9-71(4) of Mississippi's Surface Coal Mining and Reclamation Law provides that valid existing rights must have existed on or before August 3, 1977. Mississippi further explained that it may suggest a statutory change to the Mississippi Legislature to bring the state law in line with the Federal statute and regulations.

Mississippi's definition of "valid existing rights" provides that a person claiming valid existing rights must demonstrate valid existing rights in the same manner required by the Federal definition at 30 CFR 761.5, except that those rights must have existed on August 3, 1977. The Federal regulations require that valid existing rights must have existed on the date that the land came under the protection of 30 CFR 761.11 or 30 U.S.C 1272(e)—a date that could occur on or after August 3, 1977. Because rights that exist under the

Mississippi rules would also exist under the Federal regulations, we find that Mississippi's proposed definition is no less effective than the Federal definition at 30 CFR 761.5. Therefore, we are approving it.

2. Section 1103, Responsibility

Mississippi revised the language in this section by adding the phrase, "a valid existing rights determination made by OSM" after the reference to "30 U.S.C. 1272(e)." Mississippi also replaced the phrase, "this Chapter" with the phrase, "these regulations."

As revised, section 1103 reads as follows:

The Permit Board shall comply with Chapters 17 to 37 and determine whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by § 522(e) of SMCRA, 30 U.S.C. 1272(e), a valid existing rights determination made by OSM, § 53-9-71, these regulations, or a designation of the Commission.

The Federal regulations at 30 CFR 761.3 authorizes a State regulatory authority to prohibit or limit surface coal mining operations on or near

certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977. Therefore, we find that Mississippi's revisions to section 1103 are not inconsistent with 30 CFR 761.3, and we are approving it.

### 3. Section 1107, Procedures

a. At paragraph (a), Mississippi added language to require the Permit Board to determine whether proposed surface coal mining operations are limited or prohibited under section 1105 prior to the submission of a complete application, if the applicant requests the Permit Board to do so under section 1106. We find that the revision of this section is not inconsistent with the Federal provisions at 30 CFR 761.16, which allow an applicant to request that the regulatory authority make a valid existing rights determination prior to preparing and submitting an application for a permit or boundary revision. Therefore, we are approving it.

b. Mississippi revised the first sentence of paragraph (b) to provide that where a proposed operation would be located on any lands listed in section 1105, the Permit Board must deny the permit if the applicant has no valid existing rights for the area. We find that Mississippi's revisions are no less effective than the Federal provisions at 30 CFR 773.15(c)(ii), which provides that no permit application can be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing that the proposed permit area is not within an area subject to the prohibitions of 30 CFR 761.11. Therefore, we are approving it.

c. Mississippi revised paragraph (f) to provide that the Permit Board will follow the procedures required by section 3114(d) of Mississippi's rules when it determines that a proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places. Section 3114(d) of Mississippi's rules is substantively the same as the Federal provisions at 30 CFR 761.17(d), which describe the procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places. Because Mississippi's revision merely directs the reader to the procedures found in 3114(d), we find that Mississippi's revision at section 1107(f) is no less effective than the Federal provisions at 30 CFR 761.17(d), and we are approving it.

d. Finally, Mississippi removed paragraph (h), which provided that determinations made by the Permit Board concerning whether a person has valid existing rights are subject to administrative and judicial review under Miss. Code Ann. 53-9-77. Paragraph (h) also provided that determinations made by the Permit Board concerning whether surface coal mining operations existed on the date of enactment are subject to administrative and judicial review under Miss. Code Ann. 53-9-77.

Section 1106(g) of Mississippi's revised rules provides that a determination that valid existing rights do or do not exist is subject to administrative and judicial review under section 53-9-77 of the Mississippi Surface Coal Mining and Reclamation Law. Therefore, we find that the removal of the portion of section 1107(h) concerning administrative and judicial review of valid existing rights determinations does not render the Mississippi rules less effective than the Federal regulations, and we are approving it.

On December 17, 1999, we removed the portion of former 30 CFR 761.12(h) that provided for administrative appeals of existing operations determinations. In the preamble, we explained that because the exception for existing operations in 30 CFR 761.12 does not require any affirmative action or decision on the part of the permittee or the regulatory authority, no action or decision exists to appeal (64 FR 70804). Therefore, Mississippi's removal of the portion of section 1107(h) concerning administrative and judicial review of existing operations determinations is consistent with the removal of our counterpart provision at former 30 CFR 761.12(h), and we are approving it.

### C. Revisions to Mississippi's Rules With No Corresponding Federal Regulations

#### 1. Section 105, Definition of "Immediate Mining Area"

Mississippi added a definition for "immediate mining area" to read as follows:

Immediate Mining Area—as used in the definition of Road in this section, means an area of mining activity or pre-mining construction activity covered by a construction stormwater pollution prevention plan or, after construction is completed, situated so that surface water runoff will be routed to an approved water control structure such as a sedimentation pond. Routes of travel within the immediate mining area will be either: consumed by mining; reclaimed; or have design plans submitted for approval as permanent

postmine features prior to phase II bond release.

No Federal counterpart to this definition exists. However, in the preamble to our November 8, 1988, **Federal Register** (53 FR 44356) concerning roads, we discussed what the phrase meant. In that discussion, we incorporated two concepts into the interpretation of "immediate mining area"—frequent changes and drainage control. Several commenters suggested that the term be interpreted consistent with drainage control since the necessary environmental protection would be provided and it would provide an exact meaning of the term. We stated that our view is in part consistent with the commenters concerning the exclusion of roads within the permit area for which drainage control is otherwise provided. We went on to explain that because all of the other standards of section 515 of SMCRA would also necessarily apply to temporary routes not considered roads, the protection required by section 515(b)(17) of SMCRA would still be achieved. However, we retained the concept of frequent changes in order to ensure that all roads are adequately reclaimed. We stated that all routes subject to frequent changes would be obliterated during the mining process, but routes no longer changing need to be included in the definition of road to ensure that they are adequately designed, constructed, maintained, and reclaimed. No further guidance in interpretation of the phrase "frequent changes" was provided.

Routes of travel in large mines over relatively flat terrain, such as the mine in Mississippi, move as operations move, and are therefore subject to frequent change. We believe that, considering the nature of mining operations in Mississippi, it would not be unreasonable or an abuse of discretion for the State to consider the immediate mining area as matching the area where drainage control has been established through construction of siltation structures so long as mechanisms are in place to ensure that when travel routes are no longer changing, they are either (1) Reclaimed with vegetation established or (2) approved as roads as mining and reclamation operations are completed, such as by the time of phase II bond release. We believe that these mechanisms would ensure full and contemporaneous reclamation, and ensure that travel routes not reclaimed as part of the general reclamation of an area would be included in the definition of a road.

By letter dated January 23, 2002 (Administrative Record No. MS-0390), we notified Mississippi that its definition lacked the mechanisms to ensure that all travel routes are either reclaimed or approved as roads as mining and reclamation operations are completed. By letter dated July 22, 2002 (Administrative Record No. MS-0394), Mississippi sent a revision to its definition to add a provision requiring routes of travel within the immediate mining area to be (1) Consumed by mining; (2) reclaimed; or (3) have design plans submitted for approval as permanent postmine features prior to phase II bond release. Because Mississippi's definition of "immediate mining area" provides mechanisms to ensure that all travel routes are either (1) reclaimed with vegetation established or (2) approved as roads prior to phase II bond release, we find that it is not inconsistent with the requirements of the Federal program, and we are approving it.

## 2. Section 53111, Roads: General

Mississippi added new paragraphs (a)(4) and (5) to read as follows:

(4) A limited use vehicular pathway is not classified as a road if it meets all the following:

(i) the pathway has no improved roadbed, which means it has no constructed crown, compacted base, roadway ditches, or surface material added to enhance use as a pathway which precludes vegetation;

(ii) the pathway has no bridges or other cross-drainage structures;

(iii) the pathway is not located in and/or does not cross or ford any channel of an intermittent or perennial stream;

(iv) the pathway has only limited clearing, if any, of woody vegetation, typically wide enough only for the safe passage of one vehicle;

(v) the pathway is located so as to control erosion and siltation; and

(vi) maintenance of the pathway is limited to maintenance consisting only of the occasional filling of potholes and ruts in order to remain passable.

(5) A limited use vehicular pathway:

(i) shall be reclaimed with vegetation sufficient to prevent erosion prior to phase II bond release;

(ii) along with the area it disturbs, is a mining related activity and must be covered by an appropriate reclamation bond;

(iii) will be reclassified as a road if upgraded by construction activities such as blading, construction, placement of a compacted surface, cut and fill of the natural grade, construction of drainage ditches or low water crossings, or installation of drainage structures. The submittal and approval of plans and drawings required by these regulations must be completed prior to the upgrading of a limited use vehicular pathway.

No Federal counterpart to these provisions exists. However, we recognize that in flat agricultural areas such as those that occur in the mining areas of Mississippi, occasional overland travel that occurs repeatedly in the same place will create tracks that can be called pathways, trails, lanes, etc., even though there has been no improved roadbed. We further recognize that such pathways will need occasional repair or maintenance to remain passable, and that such maintenance does not necessarily make the pathway a road. We do not believe it would be unreasonable or an abuse of discretion for the State to exempt such pathways from regulation as a "road" so long as the State does not allow the pathways to have any characteristics of ancillary or primary roads.

By letter dated January 23, 2002 (Administrative Record No. MS-0390), we notified Mississippi that its provisions at 53111(a)(4) and (5) could allow limited use vehicular pathways to have some characteristics of ancillary roads. By letter dated July 22, 2002 (Administrative Record No. MS-0394), Mississippi revised its provisions at section 53111(a)(4) and (5) by removing language that would have allowed limited use vehicular pathways to have culverts, be located in and/or cross or ford channels of intermittent or perennial streams, and include water bars across the pathway and drainage ways incidental to the area. Because Mississippi's provisions at 53111(a)(4) and (5) do not allow limited use vehicular pathways to have any characteristics of ancillary or primary roads, we find that it is not inconsistent with the requirements of the Federal regulations, and we are approving it.

## C. Section 6511, Formal Review of Citations

Mississippi revised the first sentence of paragraph (c) to allow any party to a proceeding that is the result of the issuance of a notice of violation or cessation order to apply to the Commission for temporary relief from the notice or cessation order.

Mississippi's revision at section 6511(c) is substantively the same as the Federal regulation at 30 CFR 4.1261. Further, the revision satisfies the requirements placed on the Mississippi program at 30 CFR 924.16(l). Therefore, we are approving Mississippi's revision and removing the required program amendment at 30 CFR 924.16(l).

## D. Revegetation Success Guidelines

### 1. Section 53103, Revegetation: Standards for Success

Mississippi redesignated paragraph (a)(1) as paragraph (b)(1); paragraph (b)(1) as paragraph (b)(2); paragraph (b)(2) in its entirety as paragraph (b)(3); and paragraph (b)(3) as new paragraph (b)(4). Mississippi also revised paragraph (a) to incorporate by reference a revegetation success guidance document titled "Appendix A, Revegetation Success Standards." Finally, Mississippi added language in paragraph (a) to provide that if a postmining land use is selected and approved by the Permit Board for which standards are not specified in Appendix A, or if Appendix A does not specify a more specific standard of success for a postmining land use, the general standards of success found at redesignated paragraph (b) will apply.

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program. We find that Mississippi's incorporation by reference of Appendix A into its rules at 53103(a) meets the requirements of 30 CFR 816.116(a)(1), and we are approving it. Further, we find that Mississippi's Appendix A provides success standards for the most probable types of postmining land use that an operator might choose. It would be highly unlikely that an operator would select a postmining land use that was not covered by Appendix A. If an operator did choose a postmining land use that was not covered under Appendix A, Mississippi would need to develop success standards for that land use and submit them to us for approval. Therefore, we are approving Mississippi's provision at section 53103(a).

### 2. Appendix A, Revegetation Success Standards

Mississippi added Appendix A to describe the standards for revegetation success on commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, prime farmlands, recreation lands, residential lands, and wildlife habitats.

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program.

Mississippi developed its revegetation success guidelines to satisfy this requirement. The guidelines include revegetation success standards and statistically valid sampling techniques for measuring revegetation success of reclaimed commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, recreation lands, residential lands, and wildlife habitats in accordance with Mississippi's counterparts to the Federal regulations at 30 CFR 816.116. The guidelines also include revegetation success standards and statistically valid sampling techniques for restoring soil productivity of prime farmland soils in accordance with Mississippi's counterparts to the Federal regulations at 30 CFR 823.15. Mississippi's standards, criteria, and parameters for revegetation success reflect the extent of cover, species composition, and soil stabilization required in the Federal regulations at 30 CFR 816.111. As required by the Federal regulations at 30 CFR 816.116(a)(2) and (b) and 823.15, Mississippi's revegetation success standards include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking suitable to the approved postmining land uses. Mississippi's guidelines specify the procedures and techniques to be used for sampling, measuring, and analyzing vegetation parameters. Ground cover, production, and stocking suitable to the approved postmining land uses, except prime farmland, are considered equal to the approved success standard when they are not less than 90 percent of the success standard. The average production of crops for prime farmland soils must equal or exceed the average production of the same crops for the same or similar unmined prime farmland soils. Sampling techniques for measuring success use a 90-percent statistical confidence interval for all land uses. We found that use of these procedures and techniques will ensure consistent, objective collection of vegetation data.

For the above reasons, we find that the revegetation success standards and statistically valid sampling techniques for measuring revegetation success contained in Mississippi's revegetation success guidelines satisfy the requirements of 30 CFR 816.116(a)(1) and 823.15. The guidelines also satisfy the requirement placed on the Mississippi program at 30 CFR 924.16(i), and we are removing it.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment, but did not receive any.

##### *Federal Agency Comments*

On October 11, 2001, and July 30, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record Nos. MS-0395 and MS-0396, respectively). We did not receive any comments.

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

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On October 11, 2001, and July 30, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. MS-0395 and MS-0396, respectively). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 11, 2001, and July 30, 2002, we requested comments on Mississippi's amendment (Administrative Record Nos. MS-0395 and MS-0396, respectively). The SHPO responded on November 20, 2001 (Administrative Record No. MS-0389). The SHPO stated that sections 1105(c), 1106(e)(2)(ii), 1107(f), and 3114(d)(1) of Mississippi's rules should be modified to include any place that is eligible for the National Register of Historic Places as well as those that have already been included in the Register. Also, the SHPO stated that at section 2103(b)(8), Mississippi should add another item to require applications for exploration permits to contain a statement from the SHPO that assesses the need for a cultural resources survey.

On September 24, 2002 (Administrative Record No. MS-0399),

we sent a letter to the SHPO informing them that Mississippi's rules are consistent with Section 522(e)(3) of SMCRA and Part 761 of the Federal regulations. We also explained that even though SMCRA and the Federal regulations do not require consideration of properties eligible for listing on the National Register of Historic Places when making a determination of whether a person has valid existing rights to mine in areas where surface coal mining operations are normally prohibited or limited, the permit application requirements of the Federal regulations do require this consideration for these areas. Finally, we informed the SHPO that Mississippi did not propose changes to section 2103(b)(8), and that we've previously found that Mississippi's provisions at section 2103(b)(8) are substantively identical, and no less effective than, the Federal regulations at 30 CFR 772.12(b)(8).

#### V. Director's Decision

Based on the above findings, we approve the amendment Mississippi sent to us on September 28, 2001, and as revised on July 22, 2002, and September 12, 2002. We approve the rules that Mississippi proposed with the provision that the rules be published in identical form to the rules sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924, which codify decisions concerning the Mississippi 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) of SMCRA requires that a State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999. The other provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is

based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions will have no substantive effect on the regulated industry.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget 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 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

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

**List of Subjects in 30 CFR Part 924**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 17, 2002.

**Charles E. Sandberg,**

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

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

**PART 924—MISSISSIPPI**

1. The authority citation for Part 924 continues to read as follows:

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

2. Section 924.15 is amended in the table by adding a new entry in chronological order by Date of final publication to read as follows:

**§ 924.15 Approval of Mississippi regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
September 28, 2001	December 3, 2002	Sections 105; 1103; 1105; 1106; 1107(a), (b), (f), and (h); 2103(b)(14), (c), (d), (e), and (f); 3114; 53103(a) and (b); 53111(a)(4) and (5); 6511(c); and Appendix A: Revegetation Success Guidelines

**§ 924.16 [Amended]**

3. Section 924.16 is amended by removing and reserving paragraphs (i) and (l).

4. Section 924.17 is amended by revising the section heading to read as follows:

**§ 924.17 State regulatory program provisions and amendments not approved.**  
 [FR Doc. 02-30607 Filed 12-2-02; 8:45 am]  
 BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

[WV-096-FOR]

**West Virginia Regulatory Program**

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

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

**SUMMARY:** We are announcing our approval with one exception of amendments to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments we are approving concern changes to the Code of State Regulations as contained in State House Bill 4163 and Senate Bill 2002, concerning contemporaneous reclamation of mine land.

**EFFECTIVE DATE:** December 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the West Virginia Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a) (1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

**II. Submission of the Amendment**

By letter dated April 9, 2002 (Administrative Record Number WV-1296), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of several changes to the Code of State Regulations (CSR) at 38-2, and the addition of new CSR 38-4, the Coal Related Dam Safety Rules, as contained in House Bill 4163.

We announced receipt and provided an opportunity to comment on the amendment in the June 6, 2002, **Federal Register** (67 FR 38919) (Administrative Record Number WV-1311). The comment period closed on July 8, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration.

By letter and electronic mail dated June 19, 2002, WVDEP sent us additional amendments to its program that are contained in Senate Bill 2002 concerning changes to CSR 38-2

(Administrative Record Number WV-1316). Senate Bill 2002 was signed by the Governor on June 21, 2002. Senate Bill 2002 authorized the WVDEP to promulgate revisions to its Surface Mining and Reclamation Regulations.

We announced receipt of the proposed amendments in the August 16, 2002, **Federal Register** (67 FR 53542) (Administrative Record Number WV-1322). In that notice, we also identified proposed amendments that we inadvertently omitted identifying in the June 6, 2002, **Federal Register** notice, including the new Coal Related Dam Safety Rules at CSR 38-4. The comment period closed on September 16, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency.

Revisions to the State's contemporaneous reclamation requirements are contained in the two amendment submittals discussed above. In order to expedite our review of the State's amendments to its contemporaneous reclamation provisions, we have separated those amendments from the two amendment submittals discussed above. In this notice, we are presenting our findings only on the proposed amendments to the State's contemporaneous reclamation requirements at CSR 38-2-14.15. We will present our findings on the remainder of the amendments submitted by the State on April 9 and June 19, 2002, in a separate **Federal Register** notice at a later date.

**III. OSM's Findings**

For the reasons discussed below, we are approving, with one exception, the proposed amendments to the State's contemporaneous reclamation standards at CSR 38-2-14.15. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes that do not require specific approval.

*1. CSR 38-2-14.15.a.1*

This provision concerns backfilling and grading of spoil that is returned to the mined out area. The first sentence in this provision has been amended by adding the phrase "unless a waiver is