

therefore, his basic salary from the United States was not includible in his gross income by reason of being from sources without the United States. A would be required, under section 72 but without regard to section 402(a)(4) and this paragraph, to include \$60 of each monthly pension payment in his gross income. The amount that is includible in A's gross income under section 402(a)(1) with respect to the monthly payments received during taxable years beginning after December 31, 1959, and while A is a nonresident alien individual, is computed as follows:

(i) Amount of distribution includible in gross income under section 72 without regard to section 402(a)(4) .....	\$60
(ii) Aggregate basic salary for services for United States .....	100,000
(iii) Aggregate basic salary for services for United States reduced by amount of such salary not includible in A's gross income by reason of being from sources without the United States .....	0
(iv) Amount includible in A's gross income under section 402(a)(1) ((iii)+(ii)×(i), or \$0/\$100,000×\$60) .....	0

*Example (2).* B, a retired employee of the United States who performed services for the United States both in a foreign country and in the United States, receives, in respect of such services, a monthly pension of \$240 under the Civil Service Retirement Act. B received an aggregate basic salary for his services for the United States of \$120,000; \$80,000 of which was for his services performed in the United States, and \$40,000 of which was for his services performed in the foreign country. B was a nonresident alien individual during the whole of his employment with the United States and, consequently, the \$40,000 basic salary for his services performed in the foreign country was not includible in his gross income by reason of being from sources without the United States. B would be required, under section 72 but without regard to section 402(a)(4) and this paragraph, to include \$165 of each monthly pension in his gross income. The amount that is includible in B's gross income under section 402(a)(1) with respect to the monthly payments received during taxable years beginning after December 31, 1959, and while B is a nonresident alien individual, is computed as follows:

(i) Amount of distribution includible in gross income under section 72 without regard to section 402(a)(4) .....	\$165
(ii) Aggregate basic salary for services for United States .....	120,000
(iii) Aggregate basic salary for services for United States reduced by amount of such salary not includible in B's gross income by reason of being from sources without the United States (\$120,000 - \$40,000) .....	80,000
(iv) Amount includible in B's gross income under section 402(a)(1)((iii)+(ii)×(i), or \$80,000/\$120,000×\$165) .....	110

\* \* \* \* \*

[T.D. 6500, 25 FR 11675, Nov. 26, 1960, as amended by T.D. 6497, 25 FR 10021, Oct. 20,

1960; T.D. 6676, 28 FR 10142, Sept. 17, 1963; T.D. 6717, 29 FR 4092, Mar. 28, 1964; T.D. 6722, 29 FR 5073, Apr. 14, 1964; T.D. 6823, 30 FR 6340, May 6, 1965; T.D. 6885, 31 FR 7800, June 2, 1966; T.D. 6887, 31 FR 8786, June 24, 1966; T.D. 8217, 53 FR 29673, Aug. 8, 1988; T.D. 8357, 56 FR 40545, Aug. 15, 1991; T.D. 8357, 57 FR 10290, Mar. 25, 1992; T.D. 8581, 59 FR 66180, Dec. 23, 1994]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 924**

[SPATS No. MS-013-FOR]

**Mississippi Regulatory Program**

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

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

**SUMMARY:** OSM is approving, with additional requirements, an amendment to the Mississippi regulatory program (hereinafter referred to as the "Mississippi program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed to replace all of its currently approved regulations for surface coal mining and reclamation operations with new regulations. The amendment is intended to revise the Mississippi program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

**EFFECTIVE DATE:** August 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290-7282. Internet: aabbs@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Mississippi 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 Mississippi Program**

On September 4, 1980, the Secretary of the Interior approved the Mississippi program. Background information on the Mississippi program, including the Secretary's findings and the disposition of comments, can be found in the

September 4, 1980, **Federal Register** (45 FR 58520). Subsequent actions concerning the Mississippi program can be found at 30 CFR 924.10, 924.16, and 924.17.

**II. Submission of the Proposed Amendment**

By letter dated March 26, 1998 (Administrative Record No. MS-0355), Mississippi submitted an amendment to its program pursuant to SMCRA. Mississippi submitted the amendment in response to letters dated May 20, 1996, January 6, 1997, and June 17, 1997 (Administrative Record Nos. MS-0333, MS-0336, and MS-0339, respectively), that OSM sent to Mississippi in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 924.16 (a) and (e); and at its own initiative.

OSM announced receipt of the proposed amendment in the April 14, 1998, **Federal Register** (63 FR 18173), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 14, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to administrative and judicial review of permit decisions, procedures for seeking release of performance bond, surface- and ground-water monitoring, revegetation, cessation orders, formal review of citations, and numerous editorial-type errors. OSM notified Mississippi of these concerns by letter dated June 4, 1998 (Administrative Record No. MS-0366).

Mississippi notified OSM by telephone that it would not make changes to the amendment at this time and that OSM should proceed with the publication of the final rule **Federal Register** document.

**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 amendment. Detailed findings are only being made for those regulations that require additional explanation or that require additional amendment. In general provisions that are not discussed below contain language that is the same as or similar to the corresponding Federal regulations. Any differences between the State and Federal regulations are either nonsubstantive or add detail not contained in the Federal counterparts. These differences do not adversely

affect other aspects of the Mississippi program.

#### A. General

Mississippi proposed to amend its program by replacing the "Mississippi Surface Coal Mining Regulations" for surface and underground coal mining operations, Parts 100 through 250, with the "State of Mississippi Surface Coal Mining Regulations" for surface coal mining operations, Subpart I, Chapters 1 through 7; Subpart II, Chapters 9 through 15; Subpart III, Chapters 17 through 37; Subpart IV, Chapters 39 through 47; Subpart V, Chapters 49 through 71; and Policy Statement No. PS-1. The Director previously approved amendments to the Mississippi Surface Coal Mining and Reclamation Law (Mississippi Law) on January 9 and June 25, 1998 (63 FR 1342 and 63 FR 34597, respectively).

#### 1. 30 CFR 732.15 Findings

Based on the regulatory findings in this document and the statutory findings in the **Federal Register** documents dated January 9 and June 25, 1998, the Director finds that none of the proposed changes alter the original findings made at the time of program approval concerning Mississippi's authority and capability to implement, administer, and enforce a program to regulate coal exploration and surface coal mining and reclamation operations (March 25, 1980, 45 FR 19268, and September 4, 1980, 45 FR 58520).

#### 2. Underground Coal Mining Operations

Because the commercial coal seams are close to the surface, no underground coal mining activity is anticipated in Mississippi. Therefore, Mississippi did not propose any regulations relating to underground coal mining operations.

Considering the type of mining contemplated in the State, the Director finds that provisions for underground coal mining are not necessary in Mississippi at this time. Mississippi has the authority to promulgate regulations regarding the surface effects of underground coal mining operations, under section 53-9-47 of the Mississippi Law, if they are ever needed.

#### 3. Editorial Errors

In its letter dated June 4, 1998, OSM notified Mississippi of numerous spelling, format, or consistency errors that were identified during review of the proposed amendment. However, none of these errors change the meaning or impact the effectiveness of Mississippi's proposed regulations.

4. 30 CFR 924.10(b). Provisions of the Mississippi Program Affirmatively Disapproved to Comply With the Order of the District Court.

In the **Federal Register** notice announcing the Department of the Interior's approval of Mississippi's original program, the Secretary at 30 CFR 924.10(b) affirmatively disapproved several provisions of Mississippi's program that incorporated suspended or remanded Federal regulations (September 4, 1980, 45 FR 58520). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove \* \* \* those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation, Civil Action 79-1144*, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred after the date of the District Court decision. Mississippi is replacing all of its original program regulations with proposed regulations that are based on revised Federal regulations, not on the remanded 1979 language. Therefore, the Director finds, consistent with the court decision, that the affirmative disapprovals at 30 CFR 924.10(b)(1) through (37) are no longer necessary. The Director is taking this opportunity to remove them.

5. In accordance with the required program amendment at 30 CFR 924.16(a), Mississippi amended its program to include all the applicable provisions of the Federal regulations at 30 CFR Chapter VII in existence at this time. Therefore, the Director is removing the required amendment at 30 CFR 924.16(a).

#### B. Subpart I, Chapter 1, General

Chapter 1 contains introductory information on the organizational structure of the Mississippi regulatory authority, including designations of responsibility for administering and enforcing the Mississippi program at sections 101 and 103. It contains the definitions that are applicable to the State program at section 105, the provisions for making determinations of whether an operation is exempt from the regulations at section 107, and the method for computation of time under the regulations at section 115. It also contains the public participation

provisions relating to petitions to initiate rulemaking at section 109, notice of citizen suits at section 111, and availability of records at section 113.

The Director finds that, with the exception of the provisions discussed below, the proposed regulations and definitions contained in Chapter 1 contain language that is the same as or similar to and no less effective than the corresponding Federal regulations at 30 CFR Part 700 and the corresponding Federal definitions at 30 CFR 700.5, 701.5, 705.5, 707.5, 761.5, 762.5, 773.5, 800.5, 800.23, 840.11, 843.5, and 846.5.

#### 1. Sections 101 and 103, Authority and Responsibility

Section 101 provides that the Office of Geology of the Department of Environmental Quality is authorized to administer the requirements of the State laws and regulations. Section 103(a) designates the Mississippi Commission on Environmental Quality as the body to enforce the State laws and regulations, including the issuance of penalty orders, promulgation of regulations, designation of lands unsuitable for surface coal mining, and forfeiture of performance bonds. Section 103(b) designates the Mississippi Environmental Quality Permit Board as the body to issue, modify, revoke, transfer, suspend, and reissue permits and to require, modify, or release performance bonds. These three bodies work together, within the framework of the State laws and regulations, to regulate surface coal mining and reclamation operations and coal exploration on non-Federal and non-Indian lands in the State of Mississippi.

The Director finds that these provisions are consistent with the requirements of 30 CFR 700.3(c) and 700.4(c), which authorize the States to enforce State laws and regulations and delegate to the States the responsibility for regulation of surface coal mining and reclamation operations and coal exploration under an approved State program.

#### 2. Section 105, Definitions

This section contains most of Mississippi's defined terms.

a. Mississippi proposed definitions for the following accounting terms: acid test ratio, asset ratio, capital assets, cash, net profit, quick assets, retained earnings, return on investment, and working capital.

There are no Federal counterparts to these definitions. However, the Director finds that the terms are generally accepted accounting terms used in both government and business and that the

proposed definitions are consistent with the definitions found in management accounting publications for the same terms.

b. Mississippi proposed to define the term "appeal" to mean an appeal to an appropriate court of the State taken from a final decision of the Permit Board or Commission made after a formal hearing before that body.

Neither SMCRA nor the Federal regulations define the term "appeal." However, the definition is not inconsistent with section 526(e) of SMCRA or 30 CFR 775.13 of the Federal regulations, which require actions of a State regulatory authority be subject to judicial review by a court of competent jurisdiction in accordance with State law. Therefore, the Director finds that the State's definition is consistent with the generally accepted meaning of this term in the context of administrative law and is approving it.

c. Mississippi defined the terminology "as recorded in the minutes of the Permit Board" to mean the date of the Permit Board meeting at which the action concerned is taken by the Permit Board. The Permit Board records all of its initial and final decisions or actions concerning permit applications, permit suspension or revocation, and performance bond release in the minutes of the meetings held to consider them. Within specified times of these recordings, the applicants and interested parties may file written requests for formal hearings of the initial decisions before the Permit Board or appeal the final decisions before the chancery court.

Although there is no Federal counterpart definition, the Director finds that the proposed definition is not inconsistent with the administrative review requirements of SMCRA or the Federal regulations.

d. Mississippi proposed definitions for the following terms to reflect both changes in agency names and the reorganization of the State regulatory authority. The term "Commission" was defined as the Mississippi Commission on Environmental Quality. The term "Department" was defined to mean the Office of Geology of the Department of Environmental Quality. The term "Executive Director" was defined as the Executive Director of the Mississippi Department of Environmental Quality, the Mississippi Commission on Environmental Quality, and the Mississippi Environmental Quality Permit Board. The term "Office of Geology" was defined as the Office of Geology and Energy Resources of the Department, as created by Miss. Code Ann. section 49-2-7(a). The term

"Permit Board" was defined as the Mississippi Environmental Quality Permit Board created by Miss. Code Ann. section 49-17-28. The term "State Geologist" was defined as the head of the Office of Geology and Energy Resources of the Department.

There are no Federal counterpart definitions. However, since the proposed definitions clarify terms used throughout Mississippi's regulations and are not inconsistent with any terms used in SMCRA or the Federal regulations, the Director is approving them.

e. Mississippi defined the term "formal hearing" to mean a hearing on the record, as recorded and transcribed by a court reporter, before the Commission or Permit Board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the Commission or Permit Board.

There is no direct counterpart Federal definition. However, the Director finds that the proposed definition is not inconsistent with the Federal requirements for administrative review at section 525 of SMCRA and 30 CFR Part 775 of the Federal regulations.

f. Mississippi proposed the following definition for "head-of-hollow fill":

A fill structure consisting of any material, other than coal-processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

With two exceptions, the proposed definition is substantively the same as the Federal definition at 30 CFR 701.5. First, Mississippi is not allowing coal processing waste to be placed in head-of-hollow fills. Second, Mississippi specified that in fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. OSM's review determined that the addition of these requirements make Mississippi's definition more stringent than the counterpart Federal definition. The Federal regulation at 30 CFR 700.3 provides the States the authority to

enforce more stringent land use and environmental controls and regulations. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's definition for head-of-hollow fills.

g. A definition for the term "interested party" was added to mean any person claiming an interest relating to the surface coal mining operation and who is so situated that the person may be affected by that operation, or in the matter of regulations promulgated by the Commission, any person who is so situated that the person may be affected by the action.

There is no definition for the term "interested party" in SMCRA or the Federal regulations. However, the proposed definition is not inconsistent with the use of the terminology "any person having an interest which is or may be adversely affected" found in section 513(b) of SMCRA and 30 CFR Part 775 of the Federal regulations. Therefore, the Director is approving it.

h. Mississippi proposed the following definition for the term "modification":

Any change to a permit or reclamation plan that significantly changes, or has the reasonable potential significantly to change, the effect of the mining operation on either those persons impacted by the permitted operations or on the environment.

Mississippi uses the term "modification" as its counterpart to the Federal reference to "significant permit revisions" at 30 CFR 774.13. All modifications are subject to permit application information requirements and procedures, including notice and hearings.

There is no definition for the term "modification" in SMCRA or the Federal regulations. However, the Director finds that this definition is not inconsistent with the permit revision requirements of section 511 of SMCRA or the Federal regulations at 30 CFR 774.13.

i. Mississippi defined the term "monitoring," as used in Chapter 27, to mean the collection of environmental data by either continuous or periodic sampling methods. Chapter 27 contains the requirements for reclamation and operation plans, including surface- and ground-water monitoring plans.

There is no definition for the term "monitoring" in SMCRA or the Federal regulations. However, the Director finds that this definition is not inconsistent with the intent of the Federal requirements for monitoring at 30 CFR Part 780 of the Federal regulations.

j. Mississippi defined the term "Probable Cumulative Impacts," as used in Chapter 25, to mean the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime. Mississippi defined the term "Probable Hydrologic Consequence," as used in Chapter 25, to mean the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface water and ground water, the surface- or ground-water flow, timing and pattern, the stream channel conditions, and the aquatic habitat on the permit area and other affected areas. Chapter 25 contains requirements for information on environmental resources.

There are no Federal counterpart definitions for the terms "probable cumulative impacts" and "probable hydrologic consequences." However, the Director finds that the proposed definitions are not inconsistent with the Federal requirements for a probable hydrologic consequences determination at 30 CFR 780.21(f) and a cumulative hydrologic impact assessment at 30 CFR 780.21(g).

k. The terms "public hearing," "informal hearing," or "public meeting" were defined to mean a public forum organized by the Commission, Department, or Permit Board for the purpose of providing information to the public regarding a surface coal mining and reclamation operation or regulations proposed by the Commission and at which members of the public are allowed to make comments or ask questions or both of the Commission, Department, or the Permit Board. Section 53-9-37(2)(b) of the Mississippi Law allows any interested party to request a public hearing and requires the Permit Board to hold a public hearing before issuance of a permit, whether or not one has been requested. Any member of the public, not just interested parties, may attend and participate in the hearings or meeting.

There is no Federal counterpart definition. Although SMCRA does not provide for the type of open public process which allows participation by all members of the public, section 513(b) of SMCRA and 30 CFR 773.13 of the Federal regulations provide for an

informal conference if requested by any person having an interest which is or may be adversely affected or the officer or head of any Federal, State, or local governmental agency or authority. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. Therefore, the Director finds that Mississippi's proposed definition is no less stringent than the informal conference provisions of section 513 of SMCRA and no less effective than the public participation requirements of 30 CFR 773.13, and is approving the definition for these terms.

l. The term "public office" was defined to mean a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

There is no counterpart definition in SMCRA or the Federal regulations. However, the Director finds that the definition is consistent with the general meaning of the term, and is approving it.

m. Mississippi defined the term "Registered Professional Engineer" to mean a person who has met the qualifications as required under section 73-13-23(1) and who has been issued a certificate of registration by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors. The term "Registered Professional Geologist" was defined to mean a geologist who has met the academic and experience qualifications established by the Mississippi Board of Professional Geologists and has been issued a certificate of registration as a registered professional geologist by the Mississippi Board of Professional Geologists pursuant to section 73-63 *et seq.*

There are no counterpart definitions for the terms in either SMCRA or the Federal regulations. However, the definitions of these terms give guidance to the permittees in meeting the requirements of Mississippi's regulations for providing information that has been prepared by and/or certified by a Registered Professional Engineer and/or Registered Professional Geologist. Furthermore, the Director finds that Mississippi's definitions are not inconsistent with any requirements of SMCRA or the Federal regulations.

### 3. Section 107, Applicability

a. Mississippi chose not to exempt surface coal mining and reclamation operations that extract 250 tons of coal or less from its regulation requirements,

and, therefore, did not propose a counterpart to the Federal regulation at 30 CFR 700.11(a)(2).

The Federal regulation at 30 CFR 700.3 provides the States the authority to enforce more stringent land use and environmental controls and regulations. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director finds that the absence of this exemption will not make the Mississippi regulations less effective than the Federal regulations.

b. At section 107(a)(4), an exemption was provided for the extraction of coal on Indian lands in accordance with 25 CFR 177, Subpart B.

The Federal counterpart exemption was removed on September 28, 1984 (49 FR 38162), because a Federal program for Indian lands was added to the Federal regulations at 30 CFR Part 750 to include permanent program regulation requirements for surface coal mining and reclamation operations on Indian lands. However, the Director finds the proposed exemption at section 107(a)(4) will not make the Mississippi regulations less effective than the Federal regulations because Mississippi does not have the authority to regulate surface coal mining and reclamation operations on Indian lands.

### 4. Section 109, Petitions To Initiate Rulemaking

Mississippi proposed a provision at section 109(e) that allows petitioners to request a formal hearing on the Commission's denial of the petition pursuant to section 53-9-77 of the Mississippi Law.

There is no direct Federal counterpart to this provision. However, section 526(e) of SMCRA provides that actions of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. Mississippi's statute at section 53-9-77(1) allows any person who participated as a party in a formal hearing before the Commission to appeal from a final decision of the Commission to the chancery court of the county where the hearing was held. Therefore, Mississippi allows a petitioner a chance for both formal administrative review and judicial review. The Director finds that this

provision enhances the public participation requirements of the State program. Furthermore, section 109(e) does not make Mississippi's regulations inconsistent with any requirements of SMCRA or the Federal regulations.

#### *C. Subpart I, Chapter 3, Permanent Regulatory Program*

This chapter provides general introductory material for Mississippi's permanent regulatory program, including information on the applicability of the State program to coal exploration and surface coal mining and reclamation operations. The Department is authorized to administer the requirements of the permanent regulatory program.

The Director finds that the requirements of Chapter 3 are consistent with and no less effective than the requirements of 30 CFR Part 701.

#### *D. Subpart I, Chapter 4, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*

Chapter 4, sections 401 through 419, implement the exemption concerning the extraction of coal not in connection with a surface coal mine and incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$  percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

The proposed regulations at Chapter 4, sections 401 through 419, have requirements that are the same as or similar to that of the corresponding Federal regulations at 30 CFR Part 702. Therefore, the Director finds that Mississippi's regulations for implementing the exemption for coal extraction incidental to the extraction of other minerals are no less effective than the counterpart Federal regulations.

#### *E. Subpart I, Chapter 5, Restriction of Financial Interest of Employees*

Chapter 5, sections 501 through 519, include provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by State employees or specified members of public bodies who perform any function or duty under the Mississippi Law.

Mississippi's proposed regulations have requirements that are consistent with the corresponding Federal regulations at 30 CFR Part 705. Therefore, the Director finds that Mississippi's regulations at Chapter 5, concerning the restriction of financial interests of State employees, are no less effective than the counterpart Federal regulations.

#### *F. Subpart I, Chapter 7, Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*

Chapter 7, sections 701 through 705, exempt the extraction of coal which is incidental to government-financed construction from the requirements of the Mississippi Law and Mississippi's regulations, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

Mississippi's regulations at Chapter 5 have requirements that are the same as or similar to that of the corresponding Federal regulations at 30 CFR Part 707. Therefore, the Director finds that Mississippi's regulations for implementing the exemption for coal extraction incidental to government-financed highway or other construction are no less effective than the counterpart Federal regulations.

#### *G. Subpart II, Chapters 9, 11, 13, and 15, Areas Unsuitable for Mining*

Chapter 9 contains general information concerning the authority and responsibility of the Commission to establish a process for designating lands unsuitable for surface coal mining operations in Mississippi. Chapter 11 implements the authority provided by section 53-9-71 of the Mississippi Law to prohibit or limit surface coal mining operations on areas designated by act of Congress. Chapter 13 provides specific criteria for designating lands as unsuitable for surface coal mining operations. Chapter 15 contains the State process for designating areas unsuitable for surface coal mining operations.

The proposed regulations contained in Subpart II, Chapters 9, 11, 13, and 15, have provisions that are substantively the same as the requirements of the corresponding Federal regulations in Subchapter F, 30 CFR parts 761, 762, and 764. Therefore, the Director finds that Mississippi's regulations for implementing the requirements for designating areas unsuitable for mining are no less effective than the counterpart Federal regulations.

#### *H. Subpart III, Chapters 17 and 21, Coal Exploration Procedures Systems*

These chapters pertain to persons who seek to conduct coal exploration operations under Mississippi's regulations. Chapter 17 contains some general requirements for exploration procedures systems. Chapter 21 contains coal exploration and development notice requirements for

exploration removing 250 tons of coal or less. It also provides the permit requirements for exploration removing more than 250 tons of coal or occurring on lands designated as unsuitable for surface coal mining operations.

The proposed regulations contained in Subpart III, Chapters 17 and 21 are consistent with the requirements of the corresponding Federal regulations under Subchapter G, 30 CFR Part 772 for regulation of coal exploration. Therefore, the Director finds that the requirements of the State regulations for coal exploration are no less effective than the requirements of the counterpart Federal regulations at 30 CFR part 772.

#### *I. Subpart III, Chapters 17, 19, and 31, Surface Coal Mining and Reclamation Operations Permits*

These chapters pertain to each person who applies for a permit for surface coal mining and reclamation operations or conducts surface coal mining and reclamation operations pursuant to a permit under Mississippi's regulations. Chapter 17 contains some general requirements for permits and permit processing, including coordination of the review of permit applications with the requirements under other laws. Chapter 19, sections 1901 and 1903, cover information on requirements to obtain permits and compliance with permits. Chapter 31 covers public participation in permit processing, review of permit applications, criteria for permit approval or denial, permit terms and conditions, improvidently issued permits, and verification and review of ownership or control application information.

The Director finds that, with the exception of the provisions discussed below, the proposed regulation requirements contained in Subpart III, Chapters 17, 19, and 31 are substantively the same as or similar to and no less effective than the requirements of the corresponding Federal regulations under Subchapter G, 30 CFR Part 773.

##### *1. Chapter 31, Section 3101, Responsibilities*

Section 3101 provides information on the general responsibilities of the Permit Board, Department, Commission, and applicant for permits and permit processing. The Permit Board has the responsibility to approve or disapprove permits. The Department has the responsibility to review permit applications and to recommend to the Permit Board whether each application is complete and accurate and fulfills the requirements of the act and Mississippi's regulations. The

Department and the Permit Board and persons applying for permits shall provide for public participation throughout the permit process. The Commission shall assure implementation and enforcement of the requirements of Chapter 31. The applicant shall provide all information in a complete permit application for review by the Department and action by the Permit Board in accordance with Chapter 31.

There are no direct Federal counterpart requirements to Mississippi's proposed regulation. However, the Director finds that the requirements of section 3101 are not inconsistent with the requirements of sections 506, 507, or 510 of SMCRA or the Federal regulations for permits and permit processing at 30 CFR Part 773.

## 2. Chapter 31, Section 3113(b)-(f), Review of Violations

Mississippi's proposed language in section 3113 (b) through (f) is consistent with the Federal regulation at 30 CFR 773.15(b), as adopted on October 28, 1994. Mississippi's proposed regulatory language and the Federal regulatory language adopted on October 28, 1994, extend the scope of the permit block sanction to violations incurred by either the applicant or any person who is deemed or presumed to own or control the applicant. However, on January 31, 1997, the U. S. Court of Appeals for the District of Columbia Circuit invalidated portions of the language of the Federal regulation on which the proposed regulation is based because the Federal provision went beyond the plain meaning of section 510(c) of SMCRA, which appears to limit the permit block sanction to violations at operations owned or controlled by the applicant. Subsequently, on April 21, 1997, OSM issued an interim final rule revising the language of 30 CFR 773.15(b) to reflect the court's decision. The new Federal language limits the scope of the permit block sanction to violations incurred by either the applicant or persons owned or controlled by the applicant. Therefore, Mississippi's proposed regulation has more stringent requirements for issuing a permit than the revised Federal regulation. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is

approving Mississippi's regulation requirements at Chapter 31, section 3113.

## 3. Chapter 31, Section 3119, Approval or Denial of Permit Applications

In response to the required program amendment at 30 CFR 924.16(e), section 3119(b)(1)(A) provides that if a public hearing has been held under the Mississippi Law and section 3109, the Permit Board shall act upon a complete permit application within 60 days after the date of the public hearing. Mississippi allows this time frame to be extended if agreed to in writing by the Department, the applicant, and the interested party or parties, if any, that requested the public hearing.

The counterpart Federal regulation at 30 CFR 773.15(a) and section 514(a) of SMCRA do not provide for a similar extension of this 60-day time frame. OSM discussed this difference with Mississippi during its review of section 53-9-37(4) of the Mississippi Law that authorized the time-frame extension. In a letter dated November 20, 1997 (Administrative Record No. MS-0346), Mississippi explained why it anticipates the possible need for an extension to the time frame. However, in reviewing the statute, OSM found that it was unclear as to whether Mississippi required both the applicant and the interested party who requested the public hearing to agree to the extension. Consequently, in the **Federal Register** dated January 9, 1998, in Finding C.17, the Director agreed to and approved the provision with an additional requirement (63 FR 1342). The Director required Mississippi to amend its program to clarify that an extension of the 60-day time frame for acting upon a complete permit application must be agreed to by the applicant and the interested parties who requested the public hearing. Mississippi's proposed regulation meets this requirement.

Based on the above discussion, the Director finds that Mississippi's regulation at section 3119(b)(1)(A) is no less stringent than section 514(a) of SMCRA and no less effective than the counterpart Federal regulation at 30 CFR 773.15(a). Therefore, the Director is removing the required program amendment at 30 CFR 924.16(e).

## *J. Subpart III, Chapter 19, Section 1905, and Chapter 35, Permit Renewals and Permit Revisions*

Section 1905 covers some general requirements for permit renewals and permit revisions. Chapter 35 contains Mississippi's major requirements for permit reviews; permit revisions; permit

renewals; and transfer, assignment or sale of permit rights.

The Director finds that, with the exception of the provisions discussed below, the proposed regulation requirements contained in Subpart III, section 1905 and Chapter 35 are substantively the same as or similar to and no less effective than the requirements of the corresponding Federal regulations under Subchapter G, 30 CFR Part 774.

## 1. Chapter 19, Section 1905(a), and Chapter 35, Section 3507(c), Filing Deadline for Permit Renewals

Mississippi's provisions at sections 1905(a) and 3507(c) require applications for renewals to be filed at least 180 days before the expiration of the permit. They also allow an operator, if the application was timely filed, to continue surface coal mining operations until the Permit Board takes action on the renewal application. The Federal requirements for renewal of permits at section 506(d)(1) of SMCRA and 30 CFR 773.19(d) provide that a valid permit shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The Federal regulation at 30 CFR 774.15(b)(1) requires an application for renewal to be filed at least 120 days before expiration of the existing permit term. Neither SMCRA nor the Federal regulations provide guidance on whether or not an operator may continue surface coal mining operations until action is taken on a renewal application that has been filed in a timely manner. However, the Director finds that the proposed provision is not unreasonable. If the operator files an application at least 180 days before the permit expires, Mississippi should have no problems completing its approval process, pursuant to its counterparts to section 506(d)(1) of SMCRA and 30 CFR 774.15(c), prior to expiration of the permit. Therefore, the Director finds that the proposed provisions at sections 1905(a) and 3507(c) will not render the Mississippi program less stringent than SMCRA or less effective than the Federal regulations.

## 2. Chapter 35, Sections 3515 and 3517, Transfer, Assignment or Sale of Permit Rights

Mississippi's provisions for actual transfer, assignment or sale of the rights granted by a permit are consistent with the Federal provisions at 30 CFR 774.17. However, Mississippi requires a successor in interest to a permittee to apply for a new permit within 30 days of succeeding to that interest. A

successor in interest who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the Permit Board takes action on the successor's application for a new permit.

The Federal regulations do not require a successor in interest to obtain a new permit. At 30 CFR 775.17(f), the successor in interest must conduct the surface coal mining and reclamation operations in full compliance with the terms and conditions of the existing permit, unless a new or revised permit is obtained. Therefore, Mississippi's proposed regulation has more stringent requirements for transfer, assignment or sale of permit rights than the Federal regulations. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 35, sections 3515 and 3517.

#### *K. Subpart III, Chapter 33, Administrative and Judicial Review of Permit Decisions*

Section 3301 covers Mississippi's provisions for administrative review of decisions on permits. Section 3303 contains the requirements for judicial review of decisions of permits.

The Director finds that, with the exception of the provisions discussed below, the proposed regulation requirements contained in Chapter 33 are substantively the same as or similar to and no less effective than the counterpart Federal regulations under Subchapter G, 30 CFR Part 775.

##### 1. Chapter 33, Section 3301(a), Formal Hearing Time Frames

At section 3301(a), Mississippi allows the applicant or any other interested party to request a formal hearing within 45 days after the Permit Board makes its decision to issue or deny a permit application and requires hearings to be conducted within sixty (60) days after receipt of the first request for a formal hearing. This section implements Mississippi's statutory requirements for formal hearing time frames at section 53-9-39(3) of the Mississippi Law. The Director approved the statutory

requirements on January 9, 1998 (63 FR 1342).

The Federal regulation at 30 CFR 775.11(a) allows the applicant or any person with an interest which is or may be adversely affected to request a hearing within 30 days after the applicant is notified of the final decision and requires that administrative hearings on final permit decisions be held within 30 days of a request for hearing. The Director finds that allowing the applicant and interested persons 45 days to request a formal hearing will not render Mississippi's administrative review process less effective than the Federal requirements. However, in a letter dated October 23, 1997 (Administrative Record No. MS-0343), OSM expressed concern that Mississippi's statutory requirement for a 60-day rather than a 30-day time frame for holding a hearing may not be consistent with the Federal requirements. In its letter dated November 20, 1997 (Administrative Record No. MS-0346), Mississippi explained that the 60-day period stemmed from the Permit Board's procedures for holding a formal hearing. The formal hearing procedures require that direct testimony be submitted in writing, usually in affidavit form, with attached exhibits, prior to the hearing. All parties are given 30 days to submit initial testimony, and then are given 7 days to submit rebuttal testimony. The hearing normally is scheduled for 7 days after the filing of rebuttal testimony. At the hearing, cross-examination is allowed. This allows members of the public and community or environmental groups to participate in formal hearings, because the individuals or groups are given time to put their complaints and concerns in writing, rather than having to depend on the presentation of evidence through oral testimony. Taking into consideration the additional time that Mississippi allows the applicant and other interested persons to request a hearing and the formal hearing process explained above, the Director finds that Mississippi's time frame for holding a formal hearing is no less effective than the counterpart Federal provision at 30 CFR 775.11(a).

##### 2. Chapter 33, Section 3301(b), Temporary Relief

Section 3301(b) provides that any party may file a petition for temporary relief from the notice of suspension or the notice of proposed suspension and rescission in conjunction with the filing of the request for a formal hearing or at any time before a final decision is issued by the Permit Board after a

formal hearing. Subsections (b)(1) through (5) provide procedures for filing and conditions for granting temporary relief. The Director finds that the regulations under section 3301(b) are consistent with the counterpart Federal regulations at 43 CFR 4.1376 for granting temporary relief in conjunction with review of a notice of suspension or notice of proposed suspension, and the Director is approving them. However, the Federal regulations under 30 CFR 775.11(b)(2) and 43 CFR 4.1367 also provide for granting temporary relief in conjunction with all other administrative hearings of decisions on permits. Therefore, the Director is requiring Mississippi to amend section 3301(b) to add provisions for temporary relief that pertain to permit decisions in accordance with the Federal regulations at 30 CFR 775.11(b)(2) and 43 CFR 4.1367.

#### *L. Subpart III, Chapter 19, General Requirements for Permits and Permit Applications*

Sections 1907 and 1911 contain the permit application requirements for format and content, reporting of technical data, maps and plans, and completeness. Section 1909 covers Mississippi's requirements for permit fees.

##### 1. Sections 1907 and 1911, General Requirements for Format and Contents

The proposed regulation requirements contained in Chapter 19, sections 1907 and 1911, are consistent with the general content requirements for permit applications found in the corresponding Federal regulations under Subchapter G at 30 CFR Part 777. Therefore, the Director finds that Mississippi's regulations for general content requirements for permit applications at sections 1907 and 1911 are no less effective than the requirements of the counterpart Federal regulations.

##### 2. Section 1909, Permit Fees

Section 1909(a) requires the Commission to assess and collect a permit fee for reviewing the permit application and administering and enforcing a surface coal mining and reclamation permit. It also allows the Commission to set permit fees for the transfer, modification or reissuance of a surface coal mining and reclamation permit. The fees shall be set by order of the Commission in accordance with section 53-9-28 of the Mississippi Law. Section 1909(b) allows the Commission to establish a permit fee for the issuance, reissuance, transfer or modification of a coal exploration permit and a reasonable fee for a copy

of a transcript of a formal hearing. The fees shall be set by order of the Commission in accordance with section 53-9-28 of the Mississippi Law. Section 53-9-28 of the Mississippi Law provides that a permit fee may be less than, but shall not exceed the actual or anticipated direct and indirect costs of reviewing the permit application and administering and enforcing the permit. It also authorizes the Commission to establish procedures to allow the assessment and collection of the permit fee over the term of the permit.

The Federal regulation at 30 CFR 777.17 requires surface coal mining and reclamation permit applications to be accompanied by a fee as determined by the regulatory authority. It allows the fee to be less than, but requires the fee not to exceed, the actual or anticipated cost of reviewing, administering, and enforcing a permit. It also allows the regulatory authority to develop procedures which would enable the cost of the fee to be paid over the term of the permit. Therefore, the Director finds that the requirements of section 1909(a) in conjunction with the requirements of section 53-9-28 of the Mississippi Law are consistent with and no less effective than the counterpart Federal requirements at 30 CFR 777.17.

Although the Federal regulations contain no counterparts to section 1909(b) concerning permit fees for coal exploration permits and copies of formal hearing transcripts, the Director finds that Mississippi's proposed fee payment provision for coal exploration permits is not inconsistent with the Federal requirements for surface coal mining and reclamation permit application fees at 30 CFR 777.17 and finds that Mississippi's proposed fee payment provision for formal hearing transcripts is not inconsistent with the Federal provisions concerning fees for hearing transcripts at 43 CFR 4.23.

#### *M. Subpart III, Chapter 23 and Chapter 31, Sections 3121(b) and (c), General Content Requirements for Permit Applications*

Chapter 23 and Chapter 31, sections 3121(b) and (c), cover the minimum legal, financial, and compliance requirements and general information that must be contained in permit applications.

The Director finds that, with the exception of the provisions discussed below, the proposed regulation requirements contained in Chapter 23 and Chapter 31, sections 3121(b) and (c), are substantively the same as or similar to and no less effective than the minimum legal, financial, and compliance requirements and general

information that must be contained in permit applications found in the corresponding Federal regulations under Subchapter G, 30 CFR Part 778.

#### 1. Section 2305(d), Identification of Interests

Mississippi's proposed regulatory language in section 2305(d) is consistent with the Federal regulation at 30 CFR 778.13(f) as adopted on March 2, 1989 (54 FR 8982). Mississippi's regulation and the Federal regulation adopted on March 2, 1989, require permit applications to contain information pertaining to any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant. However, on January 31, 1997, the U. S. Court of Appeals for the District of Columbia Circuit invalidated portions of the language of the Federal regulation on which the proposed regulation is based because the Federal language was centered on the ownership and control rule, which the court found to exceed the mandate of section 510(c) of SMCRA. Subsequently, on April 21, 1997, OSM issued an interim final rule revising the language of 30 CFR 778.13(f) to reflect the court's decision. The new Federal regulation was modified to restrict its scope to operations owned or controlled by the applicant.

Therefore, Mississippi's proposed regulation has more stringent requirements for application information than the revised Federal regulation. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 23, section 2305(d).

#### 2. Section 2307(c), Violation Information

Mississippi's proposed regulatory language in section 2307(c) is consistent with the Federal regulation at 30 CFR 778.14(c) as adopted on October 28, 1994. Mississippi's regulation and the Federal regulation adopted on October 28, 1994, require permit applications to contain information about unabated violations and other compliance data pertaining to the applicant and surface coal mining operations owned or

controlled by either the applicant or by any person who owns or controls the applicant. However, on January 31, 1997, the U. S. Court of Appeals for the District of Columbia Circuit invalidated portions of the language of the Federal regulation on which the proposed regulation is based because the Federal language was centered on the ownership and control rule, which the court found to exceed the mandate of section 510(c) of SMCRA. Subsequently, on April 21, 1997, OSM issued an interim final rule revising the language of 30 CFR 778.14(c) to reflect the court's decision. The new Federal regulation was modified to restrict its scope to the applicant and operations owned or controlled by the applicant.

Therefore, Mississippi's proposed regulation has more stringent requirements for application compliance information than the revised Federal regulation. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 23, section 2307(c).

#### 3. Additional Information Requirements

At section 2317, Mississippi is requiring each application to contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. At section 2319, Mississippi is requiring each application to identify, by name and address, the chancery clerk's office where the applicant will file a copy of the application for public inspection. At section 2325, the Permit Board may require additional information if it determines that the information is necessary in its decision-making process concerning the issuance, denial, modification, or revocation of a permit.

There are no Federal counterparts to these information requirements. However, the Director finds that the requirements are not unreasonable and are not inconsistent with any Federal requirements. Therefore, the Director is approving sections 2317, 2319, and 2325.

*N. Subpart III, Chapter 25, Minimum Requirements for Information on Environmental Resources*

Chapter 25 establishes the minimum requirements for information on environmental resources that must be included in applications for surface mining activities.

The proposed regulation requirements contained in Chapter 25, sections 2501, 2503, 2505, 2527, 2529, 2531, 2535, and 2537, are consistent with the minimum requirements for information on environmental resources that must be contained in permit applications found in the corresponding Federal regulations under Subchapter G, 30 CFR Part 779. Therefore, the Director finds that Mississippi's regulation requirements are no less effective than the counterpart Federal regulation requirements.

*O. Subpart III, Chapter 25 and Chapter 27, Minimum Requirements for Reclamation and Operation Plans*

Chapter 25 and Chapter 27 provide the minimum requirements for the mining operation and reclamation plan portions of applications for permits for surface mining activities.

The Director finds that, with the exception of the provisions discussed below, the proposed regulation requirements contained in Chapter 25, sections 2501, 2507, 2525, and 2533, and Chapter 27 concerning operation and reclamation plans are substantively the same as or similar to and no less effective than the requirements of the corresponding Federal regulations under Subchapter G, 30 CFR Part 780.

1. Chapter 25, Section 2507, General Requirements for Description of Hydrology and Geology

The introductory text to this section requires each application to contain a description of the geology, hydrology, and water quality and quantity of all lands within the proposed permit area, the adjacent area and the cumulative impact area, provided by, or under the direction of, a qualified Registered Professional Geologist or Registered Professional Engineer as required by the Department. The description shall include information on the characteristics of all surface water and ground water within the cumulative impact area and any water which will flow into or receive discharges of water from the cumulative impact area. The information shall be provided by the Department, to the extent that this data is available from an appropriate Federal or State agency.

There is no direct Federal counterpart to this regulatory language. However,

the Director finds that these general requirements are not inconsistent with the Federal regulation requirements for geology and hydrology information at 30 CFR Part 780.

2. Chapter 25, Section 2509, Geology Description

Section 2509(b)(2)(D) requires that the geologic analyses of samples collected include a statement of the result of test borings or core sampling from the permit area. The statement shall include logs of the drill holes, the thickness of the coal seam, an analysis of the chemical properties of the coal, the sulphur content of any coal seam, chemical analysis of potentially acid or toxic forming sections of the overburden, and a chemical analysis of the stratum lying immediately underneath the coal to be mined. The Permit Board may find by a written determination that this requirement is unnecessary.

There is no direct Federal counterpart to this regulatory provision. However, the Director finds that the provision at section 2509(b)(2)(D) is not inconsistent with the Federal regulation requirements for geology at 30 CFR 780.22.

3. Chapter 27, Section 2707, Blasting Plan

Because of the physical nature of the unconsolidated overburden materials associated with coal and lignite in the State, Mississippi does not anticipate the need for blasting operations. However, just in case blasting should become necessary, Mississippi provided requirements for a blasting plan at section 2707.

The Director finds that, with the exception of the provisions discussed below, the proposed requirements at section 2707 are substantively the same as and no less effective than the Federal regulations at 30 CFR 780.13.

Section 2707(b) requires each blasting plan to include types and approximate amounts of explosives to be used for each type of blasting operation. Section 2707(c) requires the blasting plan to include a description of procedures and plans for recording and retention of information on drilling patterns, charge and packing of holes, types of fuses and detonation controls, and sequence and timing of firing holes. Section 2707(d) requires the blasting plan to include a description of blasting warning and site access control equipment and procedures. Section 2707(f) requires the blasting plan to include a description of plans for recording and reporting to the Department the results of preblasting

surveys. Section 2707(g) requires the blasting plan to contain a description of unavoidable hazardous conditions for which deviation from the blasting schedule will be needed.

There are no direct Federal counterparts to these blasting plan requirements. However, the Director finds that the requirements at sections 2707(b), (c), (d), (f), and (g) are not inconsistent with the Federal regulation requirements for blasting plans at 30 CFR 780.13.

*P. Subpart III, Chapter 25, Section 2539, and Chapter 29, Requirements for Permits for Special Categories of Mining*

Chapter 25, section 2539, provides provisions relating to the prime farmland reconnaissance inspection of the proposed permit area. Chapter 29 establishes the minimum requirements for permits for special categories of surface coal mining and reclamation operations. The special categories include: experimental practices mining; steep slope mining; permits incorporating alternatives from approximate original contour restoration requirements for steep slope mining; prime farmlands; coal processing plants or support facilities not located within the permit area of a specified mine; and in situ processing activities.

The Director finds that, with the exception of the provision discussed below, the proposed regulation requirements contained in Chapter 29 and Chapter 25, section 2539, concerning special categories of mining, are substantively the same as or similar to and no less effective than the requirements of the corresponding Federal regulations under Subchapter G, 30 CFR Part 785.

1. Chapter 29, Section 2901, Experimental Practices Mining

Section 2901(b)(3)(B) requires an application for an experimental practice to contain descriptions, maps, plans, and data which show that the mining operations approved for particular land uses or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices.

There is no direct Federal counterpart to this provision. However, the Director finds that section 2901(b)(3)(B) is not inconsistent with the application requirements for experimental practices at 30 CFR 785.13(b).

2. Chapter 29, Section 2905, Permits Incorporating Alternatives From Approximate Original Contour Restoration Requirements for Steep Slope Mining

Mississippi added provisions pertaining to the applicability and objectives of section 2905. Section 2905(a) provides that section 2905 applies to steep slope surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour. Section 2905(b) specifies that the objective of section 2905 is to allow for an alternative to approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations in order to improve watershed control of lands within the permit area and on adjacent lands and to make the land within the permit area suitable for an industrial, commercial, residential, or public use (including recreational facilities) after reclamation is completed.

There are no direct Federal counterparts to these provisions. However, the Director finds that sections 2905(a) and (b) are not inconsistent with the Federal requirements for permits incorporating alternatives from approximate original contour restoration requirements for steep slope mining at 30 CFR 785.16.

3. Chapter 25, Section 2539, and Chapter 29, Section 2907, Prime Farmland

Section 2539(b) requires the applicant to demonstrate that one of four criteria exists for land to be considered non-prime farmland: (1) The land has not been historically used as cropland; (2) the slope of the land is 10 percent or greater; (3) other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in two years, and the flooding has reduced crop yields; or (4) on the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the United States Natural Resources Conservation Service (NRCS). This demonstration must be submitted with the request for a negative determination under section 2539(d)(2).

There are no direct Federal counterpart provisions relating to the negative determination criteria at section 2539(b)(2) and (3), concerning land with slopes, rocky surfaces, or frequent flooding. However, Mississippi's proposed criteria are based on the limits that were used by the

National Cooperative Soil Survey in describing and mapping prime farmland soils, and the limits still apply (May 12, 1983, 48 FR 21447). Guidance on these types of limits is also included in the NRCS regulations at 7 CFR 657.5, concerning identification of important farmlands. Therefore, the Director finds that the provisions at section 2539(b)(2) and (3) are not inconsistent with the requirements of the Federal regulations at 30 CFR 785.17.

*Q. Subpart III, Chapter 37, Small Operator Assistance*

This chapter establishes the procedures for providing assistance to eligible operators. The proposed regulation provisions contained in Subpart III, Chapter 37, concerning Mississippi's small operator assistance program, are consistent with the requirements of the corresponding Federal regulations under Subchapter H, 30 CFR part 795. Therefore, the Director finds that Mississippi's regulations are no less effective than the requirements of the counterpart Federal regulations.

*R. Subpart IV, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations*

This subpart sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under the Mississippi program. Chapter 39 contains the general requirements for bonding of surface coal mining and reclamation operations under the Mississippi program. Chapter 41 covers the amount and duration of the performance bond. Chapter 43 pertains to the form, conditions, and terms of performance bonds and liability insurance. Chapter 45 concerns the procedures, criteria, and schedule for release of performance bonds. Chapter 47 covers performance bond forfeiture criteria and procedures.

The Director finds that, with the exception of the provisions discussed below, Mississippi's regulations for performance bond and liability insurance at Subpart IV are consistent with and no less effective than the Federal regulations at Subchapter J, 30 CFR Part 800.

1. Chapter 43, Section 4303, Terms and Conditions of the Bond

a. At section 4303(e), Mississippi added the following four conditions for surety bonds that are not contained in the counterpart Federal regulations at 30 CFR 800.20(b): (1) The Permit Board shall not accept surety bonds in excess of 10 percent of the surety company's capital surplus account as shown on the

balance sheet certified by a certified public accountant, unless otherwise provided by law; (2) the Permit Board shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by State law, or, in the absence of State law, as provided in section 4303(e)(2); (3) the Permit Board may provide in the bond that the amount shall be confessed to judgment upon forfeiture; and (4) the bond shall provide that the surety and the permittee shall be liable jointly and severally.

Similar provisions were removed from the Federal regulations on July 19, 1983 (48 FR 32931), in order to allow State regulatory authorities the discretion of establishing their own criteria for surety bonds in accordance with State law. This allows States to establish more stringent criteria in order to assure financial guarantee of the performance bonds. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 43, section 4303(e).

b. At section 4303(f), Mississippi added the following three conditions for collateral bonds that are not contained in the counterpart Federal regulations at 30 CFR 800.21(a): (1) The Permit Board shall require that all collateral bonds comply with the provisions of the definition of "collateral bond" at section 105; (2) the Permit Board shall only accept automatically renewable certificates of deposit; and (3) the Permit Board shall value certificates of deposit for full or partial fulfillment of the bond requirement at the certificate's face value and shall not allow future accrued interest to be considered in that valuation.

Similar provisions were removed from the Federal regulations on July 19, 1983 (48 FR 32931), in order to allow State regulatory authorities the flexibility to determine specific procedures concerning the acceptability of collateral bonds in accordance with State law. This allows States to establish more stringent criteria in order to assure financial guarantee of the performance bonds. Section 505(b) of SMCRA and the Federal regulation at 30 CFR

730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 43, section 4303(f).

c. At section 4303(g), Mississippi added the following three conditions for letters of credit that are not contained in the counterpart Federal regulations at 30 CFR 800.21(b): (1) The Permit Board shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant; (2) the Permit Board shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by State law or, in the absence of State law, as provided in section 4303(g)(4); and (3) the Permit Board may provide in the indemnity agreement that the amount shall be confessed to judgment upon forfeiture.

Similar provisions were removed from the Federal regulations on July 19, 1983 (48 FR 32931), in order to allow State regulatory authorities the flexibility to determine specific procedures concerning the acceptability of letters of credit in accordance with State law. This allows States to establish more stringent criteria in order to assure financial guarantee of the performance bonds. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 43, section 4303(g).

## 2. Chapter 45, Section 4501(c), Procedures for Seeking Release of Performance Bond

Mississippi's regulation at section 4501(c) allows written objections to the proposed bond release and requests for public hearings to be filed by any interested party, including any Federal, State, or local governmental agency which has jurisdiction with respect to

any social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards. Mississippi defines "interested party" to mean any person claiming an interest relating to the surface coal mining operation and who is so situated that the person may be affected by that operation, or in the matter of regulations promulgated by the Commission, any person who is so situated that the person may be affected by the action.

The counterpart Federal regulation at 30 CFR 800.40(f), section 519(f) of SMCRA, and section 53-9-65(3) of the Mississippi Law allow written objections to the proposed bond release and requests for public hearing to be filed by the same entities. But, they also allow Federal, State, or local governmental agencies which have special expertise with respect to any environmental, social or economic impact involved in the operation to file written objections and requests for public hearing. These agencies need not have jurisdiction by law or have a valid legal interest which might be adversely affected. Therefore, the Director is approving section 4501(c) to the extent that it allows written objections to the proposed bond release and requests for public hearings to be filed by any interested party, including any Federal, State, or local governmental agency which has jurisdiction with respect to any social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards. However, the Director is requiring Mississippi to amend section 4501(c) to clarify that Federal, State, or local governmental agencies which have special expertise with respect to any environmental, social, or economic impact involved in the operation are also allowed to file written objections to the proposed bond release and requests for public hearing.

## 3. Chapter 47, Performance Bond Forfeiture Criteria and Procedures

At section 4703(a), Mississippi added the following four provisions concerning procedures for bond forfeiture that are not contained in the Federal regulations at 30 CFR 800.50:

(1) If a surface coal mining and reclamation operation is not proceeding in accordance with the act or the permit, the operation represents an imminent threat to the public health, welfare and the environment, and the operator has failed, within thirty (30) days after written notice to the operator and opportunity for a formal hearing, to take appropriate corrective action, a forfeiture proceeding may be commenced by the Commission against the operator for any

performance bond or other collateral posted by the operator;

(2) A forfeiture proceeding against any performance bond or other collateral shall be commenced and conducted according to §§ 49-17-31 through 49-17-41;

(3) Forfeiture proceedings shall be before the Commission and an order of the Commission under this subsection shall be a final order. If the Commission determines that forfeiture of the performance bond or other collateral should be ordered, the Department shall have the immediate right to all funds of any performance bond or other collateral, subject only to review and appeals allowed under § 49-17-41; and

(4) If the operator cannot be located for purposes of notice, the Department shall send notice of the forfeiture proceeding, certified mail, return receipt requested, to the permittee's, surety's, and operator's last known address. The Department shall also publish notice of the forfeiture proceeding in the same manner as provided for the publication of notice for the advertisement of land ownership under § 53-9-37. Any formal hearing on the bond forfeiture shall be set at least thirty (30) days after the last notice publication.

At section 4705(b), Mississippi added provisions concerning criteria for bond forfeiture that are not contained in the Federal regulations at 30 CFR 800.50. A bond may be forfeited if the Commission finds that: (1) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver or had a receiver appointed by any court; or (2) a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area or on the collateral pledged to the Commission; and (3) the permittee cannot demonstrate or prove the ability to continue to operate in compliance with the Mississippi Law and regulations and the permit.

Similar provisions were removed from the Federal regulations on July 19, 1983 (48 FR 32931), in order to allow State regulatory authorities the discretion to determine specific procedures and criteria concerning bond forfeiture proceedings in accordance with State law. This allows States to establish more stringent procedures and criteria for forfeiture of performance bonds than do the minimum Federal standards. Section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be

inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulation requirements at Chapter 47, section 4703(a) and 4705(b).

*S. Subpart V, Chapters 49, 51, 53, 55, 57, 59, and 61, Permanent Program Performance Standards*

These chapters set forth the minimum performance standards and design requirements under the Mississippi program for coal exploration and surface coal mining and reclamation operations. Chapter 49 contains general responsibility provisions. Chapter 51 covers the permanent program performance standards for coal exploration and development operations. Chapter 53 concerns the permanent program performance standards for surface mining activities. Chapter 55 pertains to special permanent program performance standards for prime farmland. Chapter 57 covers special permanent program performance standards for operations on steep slopes. Chapter 59 relates to special permanent program performance standards for coal preparation plants and support facilities not located at or near the minesite or not within the permit area for a mine. Chapter 61 contains special permanent program performance standards for in situ processing activities.

The Director finds that, with the exception of the provisions discussed below, Mississippi's regulations for permanent program performance standards at Subpart V are consistent with and no less effective than the Federal regulations under Subchapter K at 30 CFR Parts 810, 815, 816, 823, 827, and 828.

1. Chapter 53, Section 5313, Hydrologic Balance

At section 5313(b) and (c), Mississippi proposed two additional measures to minimize disturbance of the hydrologic balance. Section 5313(b) requires operations to minimize changes in water quality and quantity, in the depth of ground water, and in the location of surface-water drainage channels so that the approved post-mining land use of the permit area is not adversely affected. Section 5313(c) requires operations to be conducted to minimize water pollution and, where necessary, requires treatment methods must be used to control water pollution. Water pollution control methods required by the Permit Board are to be recommended by the Office of Geology in consultation with the Office of Pollution Control. The person who conducts surface mining activities must operate and maintain the

necessary water treatment facilities for as long as treatment is required under Chapter 53.

There are no Federal counterparts to these provisions in 30 CFR 816.41. However, Mississippi's additional measures to minimize disturbance of the hydrologic balance are not inconsistent with any requirements of SMCRA or the Federal regulations at 30 CFR 816.41. Therefore, the Director is approving section 5313(b) and (c).

2. Chapter 53, Section 5333(b)(3)(A), Surface-Water Monitoring

Mississippi's provision at section 5333(b)(3)(A) allows the Permit Board to modify the monitoring requirements, including the parameters covered and sampling frequency, except those required by the National Pollutant Discharge Elimination System (NPDES) permitting authority. The modifications can be made if the operator demonstrates, using the monitoring data obtained under paragraph (b), that the operation has minimized disturbance to the hydrologic balance outside the permit and adjacent areas. The operator must also demonstrate that the operation has prevented material damage to the hydrologic balance outside the permit area, water quantity and quality are suitable to support approved postmining land uses, and the water rights of other users have been protected or replaced.

Mississippi's provision is substantively the same as the Federal provision at 30 CFR 816.41(e)(3)(i) with one exception. The Federal regulation requires the operator to demonstrate that the operation has minimized disturbance to the hydrologic balance "in" rather than "outside" the permit and adjacent areas. The Director finds that requiring the operator to demonstrate that the operation has minimized disturbance to the hydrologic balance outside the permit and adjacent areas, in addition to requiring the operator to demonstrate that the operation has prevented material damage to the hydrologic balance outside the permit area, would not make Mississippi's regulations less effective than the Federal regulations. Therefore, the Director is approving Mississippi's proposed language at section 5333(b)(3)(A). However, the Director is requiring Mississippi to amend section 5333(b)(3)(A) to require the operator to also demonstrate that the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas.

3. Chapter 53, Sections 5347, 5349, 5351, 5353, 5355, and 5357, Use of Explosives

Because of the physical nature of the unconsolidated overburden materials associated with coal and lignite in the State, Mississippi does not anticipate the need for blasting operations. However, just in case blasting should become necessary, Mississippi provided requirements for the use of explosives at sections 5347 through 5357.

The Director finds that, with the exception of the provision discussed below, the proposed requirements at sections 5347, 5349, 5351, 5353, 5355, and 5357 are substantively the same as or similar to and no less effective than the Federal requirements at 30 CFR 816.61, 816.62, 816.64, 816.66, 816.67, and 816.68.

At section 5347(d)(6), Mississippi is proposing the following requirement for blast designs:

No blasting shall occur until the blast design is approved in writing by the Department. No blast design shall be approved by the Department unless it fulfills the requirements of § 53-9-25 and the blast plan is previously approved by the Permit Board.

Section 53-9-25(2)(c) of the Mississippi Law requires a blasting plan which outlines the procedures and standards by which the operator will meet the regulations promulgated by Mississippi.

There is no Federal counterpart requirement. However, the Director finds that section 5347(d)(6) is not inconsistent with the requirements of section 515(b)(15) of SMCRA or 30 CFR 816.61(d) of the Federal regulations.

4. Chapter 53, Section 5381, Air Resources Protection

Section 5381(a) requires each person who conducts surface mining activities to plan and employ fugitive dust control measures as an integral part of site preparation, coal mining and reclamation operations. Control measures appropriate for use in planning, according to applicable Federal and State air quality standards, climate, existing air quality in the area affected by mining, and the available control technology shall be approved by the Department.

Section 5381(b) includes a list of 19 fugitive dust control measures to be used, as necessary, depending on applicable Federal and State air quality standards, climate, existing air quality, size of operation and type of operation.

Section 5381(c) requires that where the Department determines that application of fugitive dust control

measures listed in section 5381(b) is inadequate, the Department may require additional measures and practices as necessary. It also specifies that nothing in its regulations will lessen the responsibility of a surface coal mining and reclamation operation to comply with the air pollution control regulations promulgated by the Commission and enforced through the Office of Pollution Control.

Section 5381(d) requires air monitoring equipment to be installed and monitoring to be conducted in accordance with the air monitoring plan required under section 2711.

Similar provisions were removed from the Federal regulations on January 10, 1983 (48 FR 1160), in response to them being remanded by the U.S. District Court for revision. The U.S. District Court remanded them because the legislative history of section 515(b)(4) of SMCRA "indicates that the Secretary's authority to regulate [air] pollution is limited to activities related to erosion" (*In re: Permanent Surface Mining Regulation Litigation, Civil Action 79-1144*, D.D.C., May 16, 1980, Id., slip op. at 28). Section 515(b)(4) of SMCRA requires operations to stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution. However, section 505(b) of SMCRA and the Federal regulation at 30 CFR 730.11(b) provide that any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA or the Federal regulations shall not be construed to be inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Mississippi's regulations at Chapter 53, sections 5381 (a) through (d).

##### 5. Chapter 53, Section 5389, Time and Distance Requirements for Backfilling and Grading

At section 5389(a) and (b), Mississippi proposed the following provisions relating to backfilling and grading:

(a) Except as provided in § 5389(b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

- (1) Contour mining. Within 60 days or 1,500 linear feet following coal removal; or
- (2) Area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.
- (3) Other Surface Mining Methods. Rough backfilling and grading shall occur in accordance with the time schedule approved

by the Permit Board, on the basis of the materials submitted under § 2715, which shall specifically establish in stated increments the period between surface mining activities and completion of backfilling and grading.

(b) The Department may extend the time allowed for rough back-filling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with § 2715 that additional time is necessary.

The Federal time and distance standards for specific types of mining at 30 CFR 816.101 were suspended effective August 31, 1992 (57 FR 33875, July 31, 1992). Therefore, OSM must evaluate State time and distance requirements against the general contemporaneous reclamation requirements of section 515(b)(16) of SMCRA and 30 CFR 816.100 of the Federal regulations. Section 515(b)(16) of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that all reclamation efforts proceed as contemporaneously as practicable with the surface coal mining operations. The Federal regulation at 30 CFR 816.100 similarly provides that backfilling and grading on all land that is disturbed by surface mining activities occur as contemporaneously as practicable with mining operations.

The effect of the suspension of 30 CFR 816.101 is that regulatory authorities may adopt backfilling and grading time and distance standards for various types of mining operations that are specific to the coal mining conditions in their States, as long as the standards result in contemporaneous mining and reclamation as required by section 515(b)(16) of SMCRA and 30 CFR 816.100. It is noted that Mississippi's regulation at Chapter 53, section 5387, requires that backfilling and grading on all land that is disturbed by surface mining activities occur as contemporaneously as practicable with mining operations. Mississippi's time and distance standards appear to be reasonable and provide additional specificity to its general contemporaneous reclamation requirements at section 5387. Therefore, the Director finds that the proposed regulations at section 5389 are not inconsistent with the Federal requirements for contemporaneous reclamation for surface mining activities at section 515(b)(16) of SMCRA or 30 CFR 816.100.

##### 6. Chapter 53, Section 53101, Mulching and Other Soil Stabilizing Practices

At section 53101(b) through (d), Mississippi proposed the following

specific criteria pertaining to soil stabilizing practices:

(b) When required by the Permit Board, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the Permit Board determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the post-mining land use

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the post-mining land use.

There are no Federal counterparts to the specific criteria proposed by Mississippi. However, the Federal regulation at 30 CFR 816.114 and Mississippi's regulation at section 53101(a) require that suitable mulch and other soil stabilizing practices be used on all regraded and topsoiled areas, unless waived for specified reasons. Mississippi's provisions at section 53101(b) through (d) appear to be reasonable and provide additional specificity to its general mulching and other soil stabilizing practices at section 53101(a). Therefore, the Director is approving the proposed provisions.

##### 7. Chapter 53, Section 53103, Revegetation Standards for Success

Section 53103 covers provisions relating to standards for success in establishing postmining vegetation, the period of extended responsibility for successful revegetation, and normal husbandry practices.

Mississippi's proposed regulations at section 53103(a) are substantively the same as the Federal regulations at 30 CFR 816.116(a) relating to success of revegetation. Its proposed regulations at section 53103(b) are substantively the same as the Federal regulations at 30 CFR 816.116(c)(1), (2), and (4) relating to the period of extended responsibility for successful revegetation and selective husbandry practices. Therefore, the Director is approving Mississippi's regulations at section 53103(a) and (b).

Mississippi did not propose counterparts to the Federal regulations at 30 CFR 816.116(b), which provide minimum conditions that must be addressed by all standards for success. These conditions are applicable to all State programs and are used as a basis for developing detailed revegetation success standards. Mississippi also did not include in its revised program the standards for success and statistically valid sampling techniques for measuring success that are required by 30 CFR 816.116. Therefore, the Director

is requiring Mississippi to amend its regulatory program to include both counterparts to the Federal regulations at 30 CFR 816.116(b) and revegetation guidelines with detailed success standards and sampling techniques for measuring success.

#### 8. Chapter 55, Section 5505, Prime Farmland Soil Replacement

Section 5505(b) requires operators to replace soil material only on land which has been first returned to final grade and scarified according to sections 5389 through 5395, unless site-specific evidence is provided and approved by the Permit Board showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield. Sections 5389 through 5395 cover Mississippi's requirements for backfilling and grading.

Section 5505(f) requires operators to apply nutrients and soil amendments as needed to quickly establish vegetative growth.

There are no direct Federal counterparts to Mississippi's proposed provisions. However, the Director finds that the requirements at section 5505(b) and (f) are not inconsistent with the Federal requirements for prime farmland at section 515(b)(7) of SMCRA or 30 CFR 823 of the Federal regulations.

#### T. Subpart V, Chapters 63, 65, 67, and 69, Permanent Program Inspection and Enforcement Procedures

These chapters set forth the requirements for inspection and enforcement of coal exploration and surface coal mining and reclamation operations under the Mississippi program. Chapter 63 covers the requirements for inspections. Chapter 65 pertains to the requirements for enforcement. Chapter 67 provides the requirements for civil penalties. Chapter 69 relates to the requirements for individual civil penalties.

The Director finds that, with the exception of the provisions discussed below, Mississippi's regulations for inspection and enforcement at Subpart V are substantively the same as and no less effective than the Federal regulations under Subchapter L at 30 CFR Parts 840, 842, 843, 845, and 846.

#### 1. Chapter 65, Section 6501, Cessation Orders

Section 6501(c)(4) specifies that the cessation order "shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the executive director or his or her

authorized representative or until the order expires pursuant to § 53-9-69 or this section."

Mississippi's regulation is substantively the same as the counterpart Federal regulation at 30 CFR 843.11(c)(4) with one exception. The Federal regulation requires a cessation order to remain in effect until the order expires pursuant to section 521(a)(5) of SMCRA and 30 CFR 843.15. Mississippi's statute at section 53-9-69 does not contain a counterpart to section 521(a)(5) of SMCRA. Thus, Mississippi's reference to "§ 53-9-69 or this section" does not have the same meaning as the Federal reference to section 521(a)(5) of SMCRA and 30 CFR 843.15. Therefore, the Director is approving section 6501(c)(4) with the exception of the language "or until the order expires pursuant to § 53-9-69 or this section." The Director is requiring Mississippi to amend this language by replacing the reference to "§ 53-9-69 or this section" with a reference to "section 6509," which is a counterpart to the Federal reference of 30 CFR 843.15.

#### 2. Chapter 65, Section 6511, Formal Review of Citations

a. Section 6511(a) allows any interested party aggrieved by an action of the Commission, Executive Director or Executive Director's authorized representative taken pursuant to the Mississippi Law or regulations to request a formal hearing before the Commission as provided in sections 53-9-77 and 49-17-41 of the Mississippi Law.

As discussed in Finding C.28.a of the approval of Mississippi's statutes on January 9, 1998 (63 FR 1342), Mississippi removed its counterpart to section 525(a)(2) of SMCRA. Section 525(a)(2) of SMCRA and 43 CFR 4.1167 of the Federal regulations require that a permittee who is issued a notice or order and other interested parties who request formal review shall be given written notice of the time and place of an enforcement hearing at least five working days prior to the hearing. Mississippi's statute at section 53-9-77 and its regulation at section 6511(a) provide for a hearing under section 49-17-41 of the Mississippi Code of 1972 for enforcement actions. Section 49-17-41 requires the Commission to fix the time and place of such hearing and to notify those who requested the hearing. However, neither the statutes nor the regulations contain a time frame for notification. OSM approved section 53-9-77 of the Mississippi Law with the proviso that Mississippi would add the five-working-day notification

requirement to its revised regulations. Mississippi did add a five-working-day notification requirement to its regulations at section 6511(n)(3) relating to expedited hearings. However, OSM's requirement was for formal hearings as provided by sections 53-9-77 and 49-17-41 relating to notices of violation and orders of cessation which are not subject to expedited review.

Therefore, the Director is requiring Mississippi to amend its regulations to provide the permittee and other interested persons written notice of the time and place of an enforcement hearing provided by sections 53-9-77 and 49-17-41 at least five days prior to such hearing, or otherwise amend its program, to be no less stringent than section 525(a)(2) of SMCRA and no less effective than the requirements of 43 CFR 4.1167 of the Federal regulations.

b. Section 6511(c) allows the person to whom a notice of violation or cessation order is directed to apply to the Commission for temporary relief from the notice or order.

Mississippi's regulation at section 6511(c) limits the application for temporary relief to the person to whom a notice of violation or cessation order is directed. The Federal regulation at 43 CFR 4.1261 allows an application for temporary relief to be filed by any party to a proceeding. Because this would include the person to whom a notice of violation or cessation order is directed, the Director is approving Mississippi's proposed language. However, the Federal regulation allows all other parties to a proceeding to apply for temporary relief, not just the person to whom a notice of violation or cessation order is directed; therefore, the Director is requiring that Mississippi amend section 6511(c) to allow any party to a proceeding to apply for temporary relief.

c. Section 6511(l) allows any person qualified to receive a 30-day decision to waive that right: (1) by filing an application under section 6511(c); (2) by failing to comply with all the requirements of section 6511(h) and (i); or (3) in accordance with section 6511(n)(8).

Mississippi's regulation is substantively the same as the counterpart Federal regulation at 43 CFR 4.1186(a) with one exception. As written, the first waiver criterion in section 6511(l)(1) provides that a person may waive the right for a 30-day decision by filing an application for temporary relief under section 6511(c). The Federal regulation at 43 CFR 4.1181 and Mississippi's proposed regulation at section 6511(h) allow the filing of an application for expedited review of an order of cessation whenever temporary

relief has not been granted. The filing of a request for temporary relief under section 6511(c) should not be a reason for waiving a person's right to an expedited review. Therefore, with the exception of the first waiver criterion at section 6511(l)(1), the Director is approving section 6511(l). Furthermore, the Director is requiring Mississippi to remove section 6511(l)(1) or amend it by removing the reference to section 6511(c) and adding a reference to section 6511(a). Section 6511(a) pertains to a request for a formal hearing under sections 43-9-77 and 49-17-41. This would be consistent with the counterpart Federal regulation at 43 CFR 4.1186(a)(1) that allows any person qualified to receive a 30-day decision to waive that right by filing an application under 43 CFR 4.1160 through 4.1171, which pertains to an application for review of notices of violation and orders of cessation that are not subject to expedited review.

d. Section 6511(n)(9) allows any party desiring to appeal a decision of the Commission, granting or denying temporary relief, to appeal to and seek relief from the appropriate chancery court pursuant to section 53-9-77.

Because section 6511(n) pertains to expedited review proceedings, the language "granting or denying temporary relief" is not appropriate for section 6511(n)(9). However, the Federal regulation at 43 CFR 4.1271 allows aggrieved parties to appeal decisions relating to expedited review proceedings. Therefore, the Director is approving Mississippi's provision with the exception of the language "granting or denying temporary relief." Accordingly, the Director is requiring Mississippi to remove this language and to amend section 6511(n)(9) to clarify that it relates to an expedited review of an order of cessation.

#### *U. Subpart V, Chapter 71, Petitions for Award of Costs and Expenses*

Chapter 71, section 7101 allows any person to file a petition for award of costs and expenses including attorney's fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Mississippi Law which results in a final order being issued by the Commission or in a permit action or bond release action being taken by the Permit Board. Section 7103 provides information on where to file and the time for filing petitions. Section 7105 specifies the contents of the petitions. Section 7107 provides information on filing an answer to a petition. Section 7109 specifies who may receive an award.

Section 7113 allows an appeal of a decision concerning awards.

Mississippi's regulations at Chapter 71 are substantively identical to the counterpart Federal regulations at 43 CFR 4.1290 through 4.1296. Therefore, the Director is approving them.

#### *V. Policy Statement No. PS-1, Blaster Certification Requirements, Surface Coal Mining and Reclamation Operations*

To satisfy the blaster certification requirements at 30 CFR part 850, Mississippi submitted a policy statement entitled "Blasters Certification Requirement Policy Statement No. PS-1" (Administrative Record No. MS-0368). At section 5347(c), Mississippi requires that all blasting operations in the State be conducted under the direction of a certified blaster and in accordance with Policy Statement No. PS-1. In this policy statement, Mississippi commits to developing a valid blaster certification program in accordance with 30 CFR Part 850 should blasting become necessary. Because of the physical nature of the unconsolidated overburden materials associated with coal and lignite in the State, Mississippi anticipates that there will be no blasting operations necessary for surface coal mining and reclamation operations permitted under its program. Furthermore, until such a certification program is in place, Mississippi would recognize and accept as valid a current blaster's certification legitimately obtained from any other State or Federal regulatory authority having a blaster certification program in accordance with 30 CFR Part 850. The Department will require evidence of certification prior to any blasting operations being conducted under the Mississippi program.

Based on the above discussion, the Director finds that Policy Statement No. PS-1 in conjunction with Mississippi's proposed provisions at section 5347(c) satisfy the blaster certification requirements at 30 CFR part 850. Therefore, the Director is approving Policy Statement No. PS-1 as part of the Mississippi program.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

OSM solicited public comments on the proposed amendment, but none were received.

##### *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 Mississippi program (Administrative Record No. MS-0356).

By letter dated April 29, 1998 (Administrative Record No. MS-0362), the U.S. Army Corps of Engineers commented that it found the proposed amendment to be satisfactory. By letter dated May 8, 1998 (Administrative Record No. MS-0365), the Mine Safety and Health Administration (MSHA) commented that the proposed amendment does not appear to be in conflict with MSHA regulations.

#### **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.*).

On May 13, 1998, OSM solicited the EPA's concurrence with the proposed amendment (Administrative Record No. MS-0364). On August 5, 1998, OSM received EPA's written concurrence (Administrative Record No. MS-0369).

#### *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. On April 2, 1998, OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. MS-0356).

The SHPO, Mississippi Department of Archives and History, responded on April 15, 1998 (Administrative Record No. MS-0359). The SHPO recommended revisions to Chapter 11, section 1105(c) and (g) and section 1107(f)(1), of Mississippi's proposed regulations that would ensure conformance of the amendment with the Mississippi State Antiquities Law (39-7-3, *et seq.* of the Mississippi Code of 1972, as amended) and with the 36 CFR 800 regulations implementing Section 106 of the National Historic Preservation Act of 1966, as amended.

As discussed in Finding No. G, Mississippi's proposed regulations contained in Subpart II, Chapters 9, 11, 13, and 15, have provisions that are substantively the same as and no less effective than the requirements of the corresponding Federal regulations in Subchapter F, 30 CFR Parts 761, 762,

and 764. These would include the provisions at sections 1105(c) and (g) and 1107(f)(1). Therefore, OSM is not requiring Mississippi to make revisions to these regulations. However, the Mississippi Department of Archives and History's recommended revisions would not make Mississippi's regulations less effective than the counterpart Federal regulations, and they were forwarded to the Mississippi regulatory authority for consideration in any future program amendments.

## V. Director's Decision

Based on the above findings, the Director approves, with exceptions and additional requirements, the proposed amendment as submitted by Mississippi on March 26, 1998.

With exceptions and requirements that Mississippi further revise its regulations, the Director approves, as discussed in Finding No. K.2., section 3301(b), concerning temporary relief; Finding No. R.2., section 4501(c), concerning procedures for seeking release of performance bonds; Finding No. S.2., section 5333(b)(3)(A), concerning surface-water monitoring; Finding No. S.7., section 53103, revegetation standards for success; Finding No. T.1., section 6501(c)(4), cessation orders; Finding No. T.2.a., section 6511(a), time frame for notification of hearings; Finding No. T.2.b., section 6511(c), concerning an application for temporary relief; Finding No. T.2.c., section 6511(l)(1), concerning waiver of the right for a 30-day expedited hearing; and Finding No. T.2.d., section 6511(n)(9), concerning the appeal of a decision granting or denying temporary relief.

As discussed in Finding No. A.4., the Director is removing 30 CFR 924.10(b), concerning the disapproved provisions of the original Mississippi Program.

As discussed in Finding Nos. A.5. and I.3., the Director is removing the required program amendments at 30 CFR 924.16(a) and (e).

The Federal regulations at 30 CFR Part 924, codifying decisions concerning the Mississippi 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. In the oversight of the Mississippi 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 Mississippi 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 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.

### 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

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities.

### List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1998.

### Brent Wahlquist,

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.*

#### § 924.10 [Amended]

2. Section 924.10 is amended by removing and reserving paragraph (b).

3. 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
March 26, 1998	August 13, 1998	Subpart I, Chapters 1 through 7; Subpart II, Chapters 9 through 15; Subpart III, Chapters 17 through 37; Subpart IV, Chapters 39 through 47; Subpart V, Chapters 49 through 71; Policy Statement No. PS-1.

4. Section 924.16 is amended by removing and reserving paragraphs (a) and (e) and by adding paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (n) to read as follows:

**§ 924.16 Required program amendments.**

(f) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 3301(b) of the State of Mississippi Surface Coal Mining Regulations to add provisions for temporary relief that pertain to permit decisions in accordance with the Federal regulations at 30 CFR 775.11(b)(2) and 43 CFR 4.1367.

(g) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 4501(c) of the State of Mississippi Surface Coal Mining Regulations to clarify that Federal, State, or local governmental agencies which have special expertise with respect to any environmental, social, or economic impact involved in the operation are allowed to file written objections to the proposed bond release and requests for public hearing.

(h) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 5333(b)(3)(A) of the State of Mississippi Surface Coal Mining Regulations to require the operator to also demonstrate that the operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas.

(i) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 53103 of the State of Mississippi Surface Coal Mining Regulations, or otherwise amend its program, to include counterparts to

the Federal regulations at 30 CFR 816.116(b) and revegetation guidelines with detailed success standards and sampling techniques for measuring success.

(j) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 6501(c)(4) of the State of Mississippi Surface Coal Mining Regulations to amend the language "or until the order expires pursuant to § 53-9-69 or this section" by replacing the reference to "§ 53-9-69 or this section" with a reference to "section 6509."

(k) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 6511(a) of the State of Mississippi Surface Coal Mining Regulations to provide the permittee and other interested persons written notice of the time and place of an enforcement hearing provided by sections 53-9-77 and 49-17-41 at least five days prior to such hearing, or otherwise amend its program, to be no less stringent than section 525(a)(2) of SMCRA and no less effective than the requirements of 43 CFR 4.1167 of the Federal regulations.

(l) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 6511(c) of the State of Mississippi Surface Coal Mining Regulations to allow any party to a proceeding to apply for temporary relief, not just the person to whom a notice of violation or cessation order is directed.

(m) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 6511(l) of the State of Mississippi Surface Coal Mining Regulations to remove section

6511(l)(1) or to amend it by removing the reference to section 6511(c) and adding a reference to section 6511(a).

(n) By November 12, 1998, Mississippi must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to section 6511(n)(9) of the State of Mississippi Surface Coal Mining Regulations to remove the language "granting or denying temporary relief" and to clarify that it relates to an expedited review of an order of cessation.

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

[CGD07-98-049]

**Special Local Regulations; West Palm Beach, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary Special Local Regulations are being adopted for the Palm Beach County Offshore Grand Prix Festival & Air Show. The event will be held in two separate locations at separate times: (1) from 9 a.m. to 10 p.m. Eastern Daylight Time (EDT) on August 13, 14, 15 and 16, 1998, for a watercraft exhibition area, west of the ICW channel between the Royal Palm bascule bridge and Lake Worth LT 12 (LLNR 46875) and; (2) from 8 a.m. to 4 p.m. EDT on August 15 and 16, 1998, for the racecourse and airshow area east of Singer Island in the Atlantic Ocean, north of the Lake Worth Inlet. The regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** These regulations become effective from 9 a.m. to 10 p.m. EDT on August 13, 14, 15 and 16, 1998, with respect to the watercraft exhibition area and from 8 a.m. to 4 p.m. on August 15