

effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. 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 counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

- Does not have an annual effect on the economy of \$100 million.
- Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the

subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 2001.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01-27544 Filed 11-1-01; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS-017-FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes revisions to and additions of regulations concerning valid existing rights; roads; formal review of citations; and revegetation success standards. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document gives the times and locations that the Mississippi program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., c.s.t., December 3, 2001. If requested, we will hold a public hearing on the amendment on

November 27, 2001. We will accept requests to speak at the hearing until 4 p.m., c.s.t. on November 19, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Mississippi program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290-7282.

Department of Environmental Quality, Office of Geology, 2380 Highway 80 West, P.O. Box 20307, Jackson, Mississippi 39289-1307, Telephone: (601) 961-5500.

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

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ". . . a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Description of the Proposed Amendment

By letter dated September 28, 2001 (Administrative Record No. MS-0388), Mississippi sent us an amendment to its

program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Mississippi sent the amendment in response to our letters dated August 17, 2000, and August 23, 2000 (Administrative Record Nos. MS-0382 and MS-0381, respectively), that we sent to Mississippi in accordance with 30 CFR 732.17(c), and in response to required program amendments at 30 CFR 924.16(i) and (l). The amendment also includes changes made at Mississippi's own initiative. Mississippi proposes to amend the Mississippi Surface Coal Mining Regulations. Below is a summary of the changes proposed by Mississippi. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Section 105, Definitions

Mississippi proposes to add a definition for "immediate mining area." Mississippi also proposes to revise its definition of "valid existing rights."

B. Section 1103, Responsibility

Mississippi proposes to add the phrase, "a valid existing rights determination made by OSM" after the reference to "30 U.S.C. 1272(e)." Mississippi also proposes to replace the phrase, "this Chapter" with the phrase, "these regulations."

C. Section 1105, Areas Where Mining Is Prohibited or Limited

Mississippi proposes to add the phrase, "or qualify for the exception for existing operations under paragraph (h) of this section" at the end of the introductory language to this section. Mississippi also proposes to add new paragraph (h) to provide that the prohibitions and limitations of section 1105 do not apply to surface coal mining operations for which a valid permit exists when the land comes under the protection of section 1105 of the Mississippi regulations, section 522(e) of SMCRA, or 30 CFR 761.11.

D. Section 1106, Submission and Processing of Requests for Valid Existing Rights Determinations

Mississippi proposes to add this new section to describe the authority of the Permit Board to make valid existing rights determinations; what an applicant must submit as part of a request for a valid existing rights determination; what the Department must do when it receives a request for a valid existing rights determination; and how the Permit Board will make decisions concerning valid existing rights claims. This new section also provides that determinations concerning valid

existing rights are subject to administrative and judicial review under Mississippi Code Annotated (Miss. Code Ann.) 53-9-77. Finally, this new section requires the Department and Permit Board to make requests for valid existing rights determinations and associated records available to the public.

E. Section 1107, Procedures

At paragraph (a), Mississippi proposes to add the phrase, "or earlier, if properly requested under § 1106" after the opening phrase, "upon receipt of a complete application for a surface coal mining and reclamation operation permit."

In the first sentence of paragraph (b), Mississippi proposes to delete the specific references to section 1105(a), (f) and (g), and the phrase, "or if the operation did not exist on August 3, 1977." The revised sentence reads as follows:

(b) Where the proposed operation would be located on any lands listed in § 1105, the Permit Board shall deny the permit if the applicant has no valid existing rights for the area.

Mississippi proposes to revise paragraph (f) to provide that the Permit Board will follow the procedures required by section 3114(d) when it determines that a proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places.

Finally, Mississippi proposes to remove paragraph (h), which provides that a valid existing rights determination by the Permit Board is subject to administrative and judicial review under Miss. Code Ann. 53-9-77.

F. Section 2103, Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations

Mississippi proposes to redesignate several paragraphs in this section. Mississippi proposes to redesignate paragraph (b)(13)(A) in its entirety as paragraph (c). Mississippi also proposes to redesignate paragraph (b)(13)(B), except paragraph (b)(13)(B)(iii), as new paragraph (d). Mississippi proposes to redesignate paragraph (b)(13)(B)(iii) as new paragraph (e). Finally, Mississippi proposes to redesignate paragraph (b)(13)(C) in its entirety as new paragraph (f).

Mississippi also proposes to add new paragraphs in this section. Mississippi proposes to add new paragraph (b)(14) to require applicants for coal exploration permits to submit, as part of

their permit application, a demonstration that, for any lands listed at section 1105, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. Furthermore, applicants must provide documentation that they have consulted with the owner of the feature causing the land to come under the protection of section 1105, as well as the regulatory authority with primary jurisdiction over the feature, when applicable.

Mississippi also proposes to add a new provision at redesignated paragraph (d)(2)(iv) to require the Permit Board to approve an application for a coal exploration permit if it finds, for lands protected under section 1105, the applicant has demonstrated that the proposed exploration and reclamation activities will minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The new provision also requires the Permit Board to provide reasonable opportunity to the owner of the feature causing the land to come under the protection of section 1105, as well as the agency with primary jurisdiction over the feature when applicable, to comment on whether the finding is appropriate.

G. Section 3114, Valid Existing Rights Review at Time of Permit Application Review

Mississippi proposes to add this new section to describe the procedures the Permit Board or Department will follow when reviewing an administratively complete application for a surface coal mining operation, or an administratively complete application for revision or modification of the boundaries of a surface coal mining operations permit.

H. Section 53103, Revegetation: Standards for Success

Mississippi proposes to revise paragraph (a) to require the success of revegetation to be judged on the effectiveness of the vegetation for the approved post-mining land use, the extent of perennial cover compared to the cover occurring in natural vegetation areas, the general requirements of §§ 5397-53103, and the specific requirements of Appendix A, "Revegetation Success Standards."

Mississippi also proposes to redesignate paragraph (a)(1) as paragraph (b)(1); paragraph (b)(1) as paragraph (b)(2); paragraph (b)(2) in its entirety as paragraph (b)(3); and paragraph (b)(3) as new paragraph (4).

I. Section 53111, Roads: General

Mississippi proposes to add new paragraph (a)(4) to describe when a limited use vehicular pathway is not classified as a road. Mississippi also proposes to add new paragraph (a)(5) to read as follows:

(5) A limited use vehicular pathway: (i) May include water bars across the pathway and drainage ways incidental to the area; (ii) shall be reclaimed with vegetation sufficient to prevent erosion prior to phase II bond release; (iii) along with the area it disturbs, is a mining related activity and must be covered by an appropriate reclamation bond; (iv) will be reclassified as a road if upgraded by construction activities such as blading, construction, placement of a compacted surface, cut and fill of the natural grade, construction of drainage ditches or low water crossings, or installation of drainage structures not previously approved by the Department as appropriate to a limited use vehicular pathway. The submittal and approval of plans and drawings required by these regulations must be completed prior to the upgrading of a limited use vehicular pathway.

J. Section 6511, Formal Review of Citations

Mississippi proposes to revise the first sentence of paragraph (c) to allow any party to a proceeding that is the result of the issuance of a notice of violation or cessation order to apply to the Commission for temporary relief from the notice or cessation order. Mississippi also proposes to replace all references throughout this section to "Chief of the Legal Division" with "General Counsel."

K. Appendix A, Revegetation Success Standards

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

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Mississippi program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able

to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. MS-017-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290-7282.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Birmingham Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on November 19, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public

hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

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

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not 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.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

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

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, 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 counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 2001.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01-27543 Filed 11-1-01; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AI44

Ankylosis and Limitation of Motion of Digits of the Hands

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the evaluation criteria for ankylosis and limitation of motion of the fingers and thumb. This change is necessary to ensure that

veterans diagnosed with these conditions receive consistent evaluations.

DATES: Comments must be received by VA on or before January 2, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are in response to "RIN 2900-AI44." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273-7230.

SUPPLEMENTARY INFORMATION: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by clarifying the method of evaluation for ankylosis and limitation of motion of the digits of the hands.

Current diagnostic codes (DC's) 5216 through 5227 represent ankylosis of individual digits or combinations of digits, and they are grouped in the following way: DC's 5216 through 5219 represent unfavorable ankylosis of multiple digits; DC's 5220 through 5223 represent favorable ankylosis of multiple digits; and DC's 5224 through 5227 represent ankylosis of individual digits. Explanatory notes preceding DC 5216, following DC 5219, preceding DC 5220, following DC 5223, and following DC 5227 give specific directions on evaluating limitation of motion or ankylosis of single and multiple digits, determining whether ankylosis is favorable or unfavorable, and evaluating combinations of digit amputations at various levels or any combination of digit amputation, ankylosis, or limitation of motion of the digits.

The United States Court of Veterans Appeals (now the Court of Appeals for Veterans Claims), in *Hill v. Principi*, 3 Vet. App. 540, 541 (1992), noted that "[n]either the format of the code pertaining to finger injuries nor its interpretive notes are a model of clarity." We therefore propose to clarify the method of evaluation of ankylosis