

investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants. Similarly, disclosing this information could reasonably be expected to compromise ongoing investigatory efforts by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counter-drug and criminal investigatory records. Compliance with these provisions could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation; endanger the physical safety of witnesses or informants; or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary to complete an identity comparison between the individual being screened and a known or suspected criminal or terrorist. Also, it may not always be known what information will be relevant to law enforcement for the purpose of conducting an operational response or on-going investigation.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement and counter-drug efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that

activity. The nature of counter-drug investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety of either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic record systems and therefore it is not possible for the DEA and EPIC to vouch for their compliance with this provision. In addition, EPIC supports but does not conduct investigations; therefore, it must be able to collect information related to illegal drug and other criminal activities and encounters for distribution to law enforcement and intelligence agencies that do conduct counter-drug investigations. In the collection of information for law enforcement and counter-drug purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. EPIC has, however, implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. ESS is also exempt from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to

records in the ESS. ESS records are exempt from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of investigations. Exempting ESS from subsection (e)(5) serves to prevent the assertion of challenges to a record's accuracy, timeliness, completeness, and/or relevance under subsection (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DEA and EPIC and could alert the subjects of counter-drug, counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known. Additionally, compliance could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: September 20, 2007.

**Lee J. Lofthus,**

*Assistant Attorney General for Administration.*

[FR Doc. E7-19129 Filed 9-26-07; 8:45 am]

**BILLING CODE 4410-09-P**

## **DEPARTMENT OF LABOR**

### **Occupational Safety and Health Administration**

#### **29 CFR Part 1926**

[Docket No. OSHA-2007-0068]

RIN 1218-AC18

#### **Notice of Availability of the Regulatory Flexibility Act Review of the Occupational Safety Standard for Lead in Construction**

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of availability.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) has completed a review of its Lead in Construction Standard pursuant to section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. OSHA issued its Lead in Construction Standard in 1993 pursuant to a statutory directive to protect construction workers from lead related

diseases such as neurological and kidney disease and negative cardiovascular effects. The review found that the standard has reduced blood lead levels in construction workers thereby reducing lead-related disease. It also found that the standard has not had a negative economic impact on business, including small businesses in virtually all sectors affected, is not overly complex and does not conflict with other regulations. OSHA concludes it is necessary to retain the standard but will consider improving outreach materials and increasing their dissemination, and will consult with HUD and EPA about developing a unified training curriculum and further integrate initial assessment interpretations to reduce cost and simplify requirements for small businesses.

**ADDRESSES:** Copies of the entire report may be obtained from the OSHA Publication Office, Room N-3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1888; Fax (202) 693-2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, New Docket No. OSHA-2007-0068, Old Docket No. H-023 Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). OSHA's Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST. The main text of the report, this **Federal Register** Notice and any news release will become available on the OSHA Web page at <http://www.OSHA.gov>. Electronic copies of this **Federal Register** Document, the full text of the report, comments and referenced documents are or will become available at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** General Information: Joanna Dizikes Friedrich, OSHA Directorate of Evaluation and Analysis, Room N-36412, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1939. Technical inquiries about the Lead in Construction Standard: Maureen Ruskin, OSHA, Directorate of Standards and Guidance, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1955. Press inquiries: Kevin Ropp, OSHA Office of Communications, N-3637, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693-1999.

**SUMMARY:** In 1993, in response to a statutory mandate (Sections 1031 and 1032 of the Housing and Community

Development Act of 1992, Pub. L. 102-550), OSHA promulgated the Lead in Construction standard (29 CFR 1926.62) as an interim final rule. Elevated blood lead levels (BLLs) can produce irreversible adverse health effects, and studies had shown lead disease in construction employees. The goal of the standard is to protect construction employees from lead-related diseases, which can result from exposure to lead dust or fumes.

Construction employees are exposed to lead primarily when they remove lead-based paint (LBP) from structural steel bridges or buildings, engage in demolition of structures with LBP, engage in the removal of lead from buildings, or prepare some old residential units for painting or remodeling these units. A relatively small number of construction employees are exposed to lead when using molten lead to seal cables, lead-containing mortar, lead sheeting, repairing old plumbing, and performing work on older structures, as well as on shielding for ionizing radiation, radioactive materials, and X-rays. In 1978, LBP was banned for use on residences or other buildings where consumers could be exposed; industrial use of LBP was phased out in the same period. Lead solder for water pipes was banned in 1988.

The statute very specifically mandated the provisions in the standard. OSHA recognized, as it had when it adopted the general industry lead standard, that exposure patterns would vary widely among the different types of construction employees. Since the interim final rule was published, a number of studies have been conducted that document exposure levels and blood lead levels among construction employees. Based on the availability of more data and public recommendations, OSHA decided to conduct a review of 29 CFR 1926.62 to determine whether the standard should continue unchanged or whether it is possible to revise the standard to reduce the burden without reducing employee protection.

The risks posed by exposure to lead are well documented. The 2005 Agency for Toxic Substances and Disease Registry (ASTDR) Draft Toxicological Profile for Lead adds to the wealth of information by confirming the known health effects of lead and documenting new research, such as on the effects of lead when in combination with other metals and other toxic substances. Other research, such as the NIOSH studies of exposure pathways that can be as significant as inhalation thereby furthering employee exposures, indicate that we are continuing to uncover

evidence that employees need protection from exposure to lead. Similarly, the comments identified a number of studies of exposure of employees in a variety of workplaces demonstrating the continuing need for the protection that the Lead in Construction standard provides. Based on the findings in this report and the evidence produced during this review process, OSHA concludes that for the hazards associated with lead in the construction industry, a mandatory standard remains necessary to adequately protect employees.

During this study, no evidence has been presented to OSHA suggesting that employers are having difficulty or are not capable of complying with the Lead in Construction standard during most operations most of the time. Technologies needed to comply with the standard are readily and widely available. This look back study also concludes that the Lead in Construction standard has not had a negative economic impact on business, including small businesses, in virtually all sectors affected. The construction sector overall is growing in terms of profits, revenues and employment. OSHA finds that the Lead in Construction standard remains economically feasible.

This regulatory review of the Lead in Construction standard meets the requirements of both Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order (EO) 12866. Under Section 610, this review examines whether the standard should be continued without change, rescinded, or amended to minimize any significant impact on a substantial number of small entities, taking into consideration the continued need for the rule, comments and complaints received regarding the rule, the complexity of the rule, whether the rule is duplicative and changes in technology and economic conditions since the issuance of the rule. Under Section 5 of EO 12866, this review examines whether the standard has become unjustified or unnecessary as a result of changed circumstances, and whether the standard is compatible with other regulations or is duplicative or inappropriately burdensome in the aggregate. This review also ensures that the regulation is consistent with the priorities and the principles set forth in EO 12866 within applicable law, and examines whether the effectiveness of the standard can be improved. To assist OSHA in this review, OSHA requested public comments on these issues on June 6, 2005 (70 FR 32739).

Please note this report uses the phrase "industrial construction," "industrial painting," and similar terminology.

These phrases refer to construction work at industrial facilities and other non-building construction, such as bridges, pipelines, tunnels, tanks, etc. The phrases do not include employees in general industry, who are not covered by the Lead in Construction standard.

This review of the Lead in Construction standard under Regulatory Flexibility Act section 610 finds the following:

In 1993, OSHA estimated that 937,000 employees were exposed to lead in the construction industry. That included employees exposed below levels that would trigger the standard. OSHA estimates that, as of 2003, there were 649,000 employees exposed at levels that may trigger application of the standard.

OSHA regularly enforces the lead standard in the construction industry. Between 1993 and 2003, Federal OSHA and State-Plan States made a total of 4,384 inspections in construction that covered lead exposure and issued 12,556 citations.

Less than 25 percent of housing units have lead paint on any element. This represents about 20 million housing units. It is not known how many commercial and industrial buildings have lead paint, but the age distribution of those buildings is similar to that of residential buildings. There are about 225,000 structural steel highway and railroad bridges in the U.S., and it is estimated that 90,000 have lead paint. Other industrial structures, such as tanks, may have lead paint. Older plumbing may use lead pipes or lead solder. Lead solder still has some uses; lead containing mortar is used in tanks containing acid; lead is used for some electric cable splicing, radiation shields, and for some other purposes. Construction employees may be exposed to lead in these areas.

There is a continued need for the Occupational Safety and Health Administration (OSHA) Lead in Construction standard. This standard, mandated by statute, remains both justified and necessary to implement the statute's intent; that is, to reduce both lead exposures in construction employees and disease resulting from these lead exposures. The standard has reduced blood lead levels (BLLs) of exposed employees. Retention of the standard is necessary to continue to achieve that goal because the study revealed that certain construction jobs still have high airborne lead exposures, and compliance data indicate that there are still instances of non-compliance with the standard.

Studies continue to show that elevated BLLs are associated with

neurological effects, including reduced intelligence, changes in brain function, fatigue, impotence, and reductions in nerve conductivity. There are also systemic effects from lead exposures, such as changes in the level of circulating thyroid hormones and changes in immune system parameters. Other effects from lead exposures include reduced kidney function, increased blood pressure, gastrointestinal effects, cardiovascular effects, and anemia. There is evidence that lead is a reproductive toxin. The U.S. Department of Health and Human Services (DHHS) has determined that lead and lead compounds are reasonably anticipated to be human carcinogens, and the U.S. Environmental Protection Agency (EPA) has determined that lead is a probable human carcinogen. Furthermore, a recently published study of the general, U.S. adult population reports increases in both cardiovascular deaths and deaths from all causes at BLLs substantially lower than previously reported [i.e., an increase in mortality at BLLs  $>0.10 \mu\text{m}^3/\text{L}$  ( $\geq 2 \mu\text{g}/\text{dL}$ )].

A number of jobs in the construction industry create high airborne levels of lead. These include bridge repainting and repair, lead remediation, remodeling and renovation of older housing and commercial buildings, preparation for repainting of residences and other structures, repairs of older plumbing, and other jobs. Exposures to employees in bridge repainting can be in the 1000's of  $\mu\text{g}/\text{m}^3$  of lead, and paint preparation exposures can be in the 100's of  $\mu\text{g}/\text{m}^3$  of lead. National Adult Blood Lead Epidemiology and Surveillance (ABLES) data and other studies show that some construction employees still have relatively high blood lead levels which may be indicative of disease. These data show that the standard has resulted in lower blood lead levels for construction employees. Although one study indicates that high airborne exposures did not lead to high blood lead levels for a group of residential painters, other studies indicate high blood lead levels in residential painters. No studies contradict Congress' conclusion that this standard is needed to protect construction employees.

The evidence indicates that the Lead in Construction standard has not had a negative economic impact on business, including small businesses, in virtually all sectors affected. The construction sector overall is growing in terms of profits, revenues and employment. Small businesses are retaining their share of the business. Bridge painting is generally paid for by governmental

entities that usually require bidders to meet the OSHA standard. Larger projects need to meet EPA requirements requiring experienced contractors who follow OSHA requirements. Lead remediation projects follow HUD requirements which require compliance with the OSHA requirements. Renovation and remodeling of older buildings containing lead are usually big enough jobs so that the costs of following the OSHA standard are relatively small in comparison to total costs.

In addition to potential exposure to lead in bridge painting projects, lead paint is still used in some municipalities for traffic paints. However, studies have shown that exposures are minimal because of the nature of the equipment used. Substitutes are available and widely used through the United States; in fact, several jurisdictions prohibit the use of lead chromate paint. Therefore, OSHA expects the economic impact to be negligible.

Residential repainting presents a more complex picture. Lead paint was banned after 1978; therefore, the standard has no impact on painting new units or repainting units built after 1978. There is relatively little lead paint on units built from 1941 to 1978; for most repainting jobs on units built between 1941 and 1978, an initial assessment that lead exposures are low is all that would be required, and therefore, the costs are manageable for small painting contractors. For some units built before 1941 and a few built from 1941 to 1978 lead exposure levels were high during preparation for repainting. In these cases, the standard would impose costs to reduce the hazards to which the painters and their families were exposed. For larger and better quality jobs, the costs to comply with the standard are manageable for small painting contractors. However, for smaller, low quality jobs, a self-employed painter not covered by the standard could underbid a contractor who followed the standard, and for this limited category of jobs, there could be a negative economic impact.

On Jan. 10, 2006, EPA proposed regulations for all rental properties and owner-occupied housing containing children under 6 to protect the residents from lead exposure. The practical effect of those regulations will be to encourage the hiring of painting contractors who obey the OSHA standard, and therefore, those small painting contractors who comply with the OSHA Standard will then be more likely to be hired. Steps OSHA will be taking to further reduce economic impacts are discussed below.

The standard is not overly complex. It follows the format and principles of other OSHA health standards. However, OSHA will review its compliance assistance and guidance materials to determine the need for enhancements. OSHA also will review the adequacy of how these materials are disseminated and additional means for reaching affected populations.

The OSHA Lead in Construction standard does not conflict with other regulations. Both EPA and HUD have major regulations regarding lead, the EPA to reduce lead in the environment and HUD to reduce lead exposure in residences, especially to children. The OSHA and HUD regulations tend to be complementary. Following OSHA regulations will reduce lead dust in residences which both protects the painter or remodeler and the children who live in that unit. The relationship with EPA regulations is more complex. For example, EPA requires the use of enclosures on bridge painting to prevent the spread of lead to the environment. This tends to increase airborne exposures in the employee's breathing zone, making rigorous adherence to the OSHA standard crucial for protecting the employee.

Though the HUD and EPA regulations do not conflict with OSHA's standard, commenters made two suggestions which OSHA will seriously consider and discuss with EPA, HUD, and NIOSH. First, many of the commenters suggested that the agencies develop a joint training program which would cover the requirements of each of the agencies. Second, some commenters suggested that OSHA consider modifying its initial assessment monitoring to be more integrated with HUD and EPA approaches.

Several technological changes will make it easier to comply with the standard. The reduced use of lead in paint, piping, solder and elsewhere will in the long term reduce employee exposure to lead. Low-volume/high-velocity exhaust systems adapted to portable hand tools can increase their effectiveness and reduce their cost of operation. Small volumes of air at relatively high velocities are used to control dust. Portable trailers with showers and clean change facilities have become more available and cheaper to rent, reducing the likelihood that employees will contaminate "clean areas" of the project (including non-lead areas, and sanitary/eating/drinking facilities), themselves, and other employees, and reducing the chance that lead would be tracked home.

OSHA received a number of extensive comments which are summarized in

Chapter 8. Commenters representing NIOSH, HUD, state EPAs, the Building and Construction Trades Division of the AFL-CIO, the New York State Occupational Health Clinic Network, and a number of public interest and environmental protection professional groups stressed the need for the standard, the studies demonstrating the negative health effects of lead, and the high levels that construction employees can be exposed to if they are not properly protected. They suggested ways that the standard should be strengthened and expressed how important it is that the OSHA, HUD, and EPA regulations all work together.

The National Association of Home Builders, U.S. Chamber of Commerce, and U.S. Small Business Administration suggested that OSHA have a rulemaking to reconsider the data and make the standard more cost-effective. Congress not only directed OSHA to issue the Lead in Construction standard, it also specified in considerable detail what should be included in this standard in response to lead poisoning of construction employees. Congress did not specifically direct OSHA to engage in further rulemaking like it did when it directed OSHA to issue the Hazardous Waste standard. The health studies and exposure information since the standard was issued do not indicate any less need for the standard, and the standard is consistent with other health standards. Therefore, a very large-scale, OSHA resource-intensive rulemaking for lead in construction, which would most likely result in a rule very similar to the rule we have now, does not appear to be a wise use of OSHA's limited rulemaking resources.

Many commenters made suggestions intended to make the standard more effective in protecting employees and more cost-effective. These include: issuing more extensive outreach and guidance materials, including materials in Spanish and other relevant languages; developing a joint training curriculum covering OSHA, HUD, and EPA requirements; developing a clearer initial assessment approach, to be better integrated with HUD and EPA requirements; reducing any duplication between regulations; and making the standard more cost-effective for small businesses, by encouraging the development of less costly ways to meet industrial hygiene requirements, so that lead will not contaminate the employees, clean areas of the project (including, for example, non-lead areas, sanitary/eating/drinking facilities, etc.) and reducing the chance that lead would be tracked home. OSHA will

review these suggestions for possible implementation.

The Executive Order 12866 review of the Lead in Construction standard indicates that:

The Lead in Construction standard, mandated by statute, remains both justified and necessary to implement the statute's intent; that is, to reduce both lead exposures in construction employees and disease resulting from these lead exposures. The standard has reduced blood lead levels of exposed employees. Its retention is necessary to continue to achieve that goal because construction jobs still have high airborne lead exposures, and compliance data indicate that there are continuing violations of the standard. Therefore, the standard is consistent with EO 12866.

The standard is consistent with other OSHA standards. Also, it is not in conflict with and is generally consistent with EPA regulations to reduce environmental exposures and with HUD regulations to reduce lead exposures in children. Indeed, the OSHA standard is often complementary to those regulations. As discussed, OSHA will review initial assessment requirements to see if a more unified and cost-effective approach can be developed.

The standard is not inappropriately burdensome in the aggregate. The one narrow area discussed above where there may be some burden (i.e., house painters exposed to lead while performing small jobs) will be ameliorated by better outreach materials, better guidance on initial assessment, and the finalization of new EPA regulations.

The effectiveness of the Standard could be improved by making outreach materials available in Spanish and other relevant languages. Also, after consultation with EPA and HUD, OSHA will consider the development of unified training materials and exploring a more unified approach to initial assessment.

## Conclusions and Recommendations

### Conclusions

OSHA concludes that the Lead in Construction standard is necessary to protect construction employees from lead disease. Studies continue to demonstrate that elevated lead exposures result in disease and that some construction jobs involve high airborne lead exposures. The standard has resulted in reduced blood lead levels for construction employees.

The Lead in Construction standard is also consistent with the Presidential priority "to eliminate childhood lead

poisoning in the United States as a major public health problem by the year 2010," because the standard "also benefits the children of those workers who may have been placed at risk via take-home exposures (such as lead dust on work clothing)."

#### Recommendations

As a result of this look back review and the comments received from participants, OSHA is considering the following actions to improve the effectiveness of the standard and make it more cost-effective:

OSHA will review its compliance assistance materials to determine the need for updates. OSHA also will review the adequacy of how these materials are disseminated and additional means for reaching affected populations.

OSHA will consult with EPA and HUD to determine the value of a unified training curriculum and whether a course can be developed to meet the requirements of all three agencies. OSHA also will attempt to develop interpretations for its initial assessment requirements [29 CFR 1926.62(d)], in order to integrate them better with HUD and EPA requirements, reduce duplication, and make better use of historical data; these interpretations should help reduce costs and simplify the standard's requirements for small businesses.

Signed at Washington, DC, this 24th day of September, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E7-19096 Filed 9-26-07; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 924

[Docket No. MS-021-FOR]

#### Mississippi Abandoned Mine Land Reclamation Plan

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

**ACTION:** Final rule; approval of abandoned mine land reclamation plan.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving Mississippi's abandoned mine land reclamation plan (Mississippi Plan) submitted to us under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The purpose of the plan is to demonstrate the State's intent and capability to assume responsibility for administering the abandoned mine land

reclamation (AML) program established by Title IV of SMCRA. As part of the plan, Mississippi submitted policies and procedures to be followed in conducting reclamation of abandoned coal mine lands in Mississippi. These policies and procedures, along with the State's AML statutes that we approved on August 25, 2006, constitute the complete Mississippi plan.

**DATES:** *Effective Date:* September 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290-7282. E-mail: [swilson@osmre.gov](mailto:swilson@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the AML Program and Mississippi's Plan

The AML Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands. In order to assume this responsibility, the States or Indian Tribes must develop and submit to the Secretary of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. The Federal regulations at 30 CFR part 884 specify the content requirements of the State reclamation plan and the criteria for plan approval. Under these regulations, the Director of the Office of Surface Mining Reclamation and Enforcement is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is not approved, the State may submit a revised reclamation plan at any time. If the Secretary determines that a State has developed and submitted a program for the reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive authority to

implement the provisions of the approved program. The Mississippi Plan can be approved if:

1. The public has been given adequate notice and opportunity to comment and the record does not reflect major unresolved controversies.

2. The views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies, and administrative structure to carry out the plan.

4. The plan meets all the requirements of our AML program provisions.

5. The State has an approved regulatory program.

6. The plan is in compliance with all applicable State and Federal laws and regulations.

Upon approval of the State reclamation plan, the State may submit to us on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State's reclamation plan as approved. Such annual requests are reviewed and approved by us in compliance with the requirements of 30 CFR Part 886.

By letter dated April 5, 2006 (Administrative Record No. MS-0402), Mississippi sent us its AML plan statutes. Mississippi revised and added statutes to the Mississippi Surface Coal Mining and Reclamation Law at Sections 53-9-3, 53-9-7, 53-9-89, 53-9-89(1)(c), 53-9-89(1)(c)(i) through (v), 53-9-101, 53-9-103, 53-9-105, 53-9-107, 53-9-109, 53-9-111, 53-9-113, 53-9-115, 53-9-117, 53-9-119, 53-9-121, 53-9-123. We approved Mississippi's revised and added statutes on August 25, 2006, thereby, granting partial approval of its AML plan (71 FR 50339).

Mississippi's current AML plan submission addresses the policies and procedures the State will follow in administering the Mississippi Plan.

#### II. Submission of the Mississippi Plan Policies and Procedures

By letter dated June 11, 2007 (Administrative Record Nos. MS-0417-01 through MS-0417-06), and at its own initiative, Mississippi sent us the proposed policies and procedures of the Mississippi Plan under SMCRA (30 U.S.C. 1201 *et seq.*).

We announced receipt of the submission in the July 24, 2007, **Federal Register** (72 FR 40266). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the plan. The public comment period closed on August 23, 2007. Because no one requested a public hearing or meeting,