

Dated: December 4, 2008.

Michael B. Mukasey,

Attorney General.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[MS-018-FOR; Docket No. OSM-2008-0017]

Mississippi Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to its regulations and statute regarding "valid existing rights" as they pertain to designation of lands as unsuitable for surface coal mining operations. Mississippi intends to revise its program to be consistent with SMCRA.

DATES: *Effective Date:* December 10, 2008.

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

SUPPLEMENTARY INFORMATION:

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

approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the Mississippi program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Amendment

By letter dated April 5, 2006 (Administrative Record No. MS-0402), Mississippi sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Mississippi sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the May 24, 2006, **Federal Register** (71 FR 29867). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. No one requested a public hearing or meeting. The public comment period closed on June 23, 2006.

During our review of the amendment, we identified concerns about Mississippi's use of the term "Valid Rights" in its statute while the Federal regulations and statute uses the term "Valid Existing Rights." We notified Mississippi of these concerns by letter dated August 17, 2006 (Administrative Record No. MS-0414).

By letter dated May 30, 2008 (Administrative Record No. MS-0416-02), Mississippi provided explanatory information concerning the meaning of the terms "valid rights" and "valid existing rights" as used in the State statutes and regulations. By e-mail dated July 23, 2008 (Administrative Record No. MS-0416-03), Mississippi sent us a revised copy of its regulations.

Based upon Mississippi's explanatory information and revisions to its amendment, we reopened the public comment period in the August 26, 2008, **Federal Register** (73 FR 50263). No one requested a public hearing or meeting. The public comment period closed on September 10, 2008.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Changes to the Mississippi Code Annotated Section 53-9-71(4)

Mississippi proposed to revise section 53-9-71(4) to provide that after July 1,

1979, and subject to valid rights, no surface coal mining operations shall be permitted on certain lands. Those certain lands are specified in section 53-9-71(4) of the Mississippi statute.

The Federal counterpart statute to Mississippi's above statute is found at section 522(e) of SMCRA. Section 522(e) prohibits or restricts surface coal mining operations on certain lands, "subject to valid existing rights," after the date of SMCRA's enactment (August 3, 1977), including, among other areas, units of the National Park System, Federal lands in national forests, and buffer zones for public parks, public roads, occupied dwellings, and cemeteries. The Act provides that these prohibitions and restrictions do not apply to operations in existence or under a permit on the date of enactment.

Mississippi's statute prohibits or restricts coal mining operations on the same lands as its Federal counterpart. It makes these prohibitions or restrictions subject to Valid Rights. We received a letter dated May 30, 2008 (Administrative Record No. MS-0416-02), from the General Counsel for the Mississippi Department of Environmental Quality stating that it was his opinion that the term "valid rights" as used in § 53-9-71(4) means "valid existing rights" as used in the State regulations and SMCRA. In addition, these prohibitions and restrictions do not apply to operations in existence or under a permit on the date of enactment of the State statute. Because rights that would exist under the Federal statute would also exist under the Mississippi statute, we find that Mississippi's proposed statute is no less stringent than the Federal statute.

B. Changes to the Mississippi Surface Coal Mining Regulations (MSCMR)

Mississippi proposed to revise its regulations in order to reconcile them with the State's above proposed statute revision. In this statute, Mississippi uses the term "valid rights." Mississippi clarified that the term "valid rights" as used in the State statute means the same as its term "valid existing rights" as used in the State regulations at MSCMR Section 105. Following are the regulations that Mississippi proposed to add or revise:

MSCMR Section 105. Definitions

Mississippi proposed to add a definition for "valid rights" to read as follows:

Valid Rights—as used in § 53-9-71(4) of the Act means Valid Existing Rights.

MSCMR Section 1101. Authority

Mississippi proposed to revise this section to read as follows:

The Commission is authorized by § 53–9–71(4) of the Act to prohibit or limit surface coal mining operations on or near certain private, federal and other public lands, subject to valid rights.

MSCMR Section 1105. Areas Where Mining is Prohibited or Limited

Mississippi proposed to revise the introductory paragraph of this section to read as follows:

Subject to valid existing rights as defined in § 105, no surface coal mining operations shall be conducted on the following lands unless you have valid existing rights as determined under § 1106 or qualify for the exception for existing operations under paragraph (h) of this section:

SMCRA does not define or explain the term “valid existing rights” (VER) in the context of section 522(e) of the Act; however, our rulemaking on December 17, 1999 (64 FR 70766), does. Our regulations define VER as a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where section 522(e) of the Act and 30 CFR 761.11 would otherwise prohibit such operations. The Mississippi regulation at MSCMR section 105 contains a definition for VER that is substantively the same as the Federal definition for VER. Also, Mississippi added a new regulation defining “valid rights,” found in the State statute at section 53–9–71(4), as having the same meaning as its definition of “valid existing rights” as defined in its regulations. The regulation revisions at MSCMR sections 1104 and 1105 simply clarify that surface coal mining operations on lands where mining is prohibited or restricted are subject to VER. Finally, we received a letter dated May 30, 2008 (Administrative Record No. MS–0416–02), from the General Counsel for the Mississippi Department of Environmental Quality stating that it was his opinion that the term “valid rights” as used in § 53–9–71(4) means “valid existing rights” as used in the State regulations and SMCRA. For the above reasons, we find that the revisions to Mississippi’s regulations are no less effective than the Federal regulations and we are approving them.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

On April 20, 2006, and August 15, 2008, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from

various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record No. MS–0416–04). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). On August 15, 2008, we requested comments on the proposed amendments from the EPA (Administrative Record No. MS–0416–04). The EPA did not respond to our request.

V. OSM’s Decision

Based on the above findings, we approve the amendment Mississippi sent us on April 5, 2006, and as revised on July 23, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924, which codify decisions concerning the Mississippi program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and

has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Mississippi program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Mississippi program has no effect on Federally-recognized Indian tribes.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 2008.

William L. Joseph,

Acting Mid-Continent Regional Director.

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

PART 924—MISSISSIPPI

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

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

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

§ 924.15 Approval of Mississippi regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
April 5, 2006	December 10, 2008	MSCMR 53–9–71(4) Sections: 105, 1101, and 1105.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2007–HA–0048; RIN 0720–AB19]

32 CFR Part 199

TRICARE; Hospital Outpatient Prospective Payment System (OPPS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements a prospective payment system for hospital outpatient services similar to that

furnished to Medicare beneficiaries, as set forth in Section 1833(t) of the Social Security Act. The rule also recognizes applicable statutory requirements and changes arising from Medicare’s continuing experience with this system including certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The Department is publishing this rule to implement an existing statutory requirement for adoption of Medicare payment methods for institutional care which will ultimately provide incentives for hospitals to furnish outpatient services in an efficient and effective manner.

DATES: *Effective Date:* February 9, 2009.

FOR FURTHER INFORMATION CONTACT: David E. Bennett or Martha M. Maxey, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3494 or (303) 676–3627.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Medicare OPSS evolved out of Congressional mandates for replacement of Medicare’s cost-based payment methodology with a prospective payment system (PPS). Medicare implemented OPSS for services furnished on or after August 1, 2000, with temporary transitional provisions to buffer the financial impact of the new prospective payment system (*e.g.*,