



This document is scheduled to be published in the Federal Register on 09/19/2012 and available online at <http://federalregister.gov/a/2012-23077>, and on FDsys.gov

4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SATS No. MS-023-FOR; Docket No. OSM-2012-0018]

Mississippi Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are 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 its regulations regarding: definitions; identification of interests; lands eligible for remining; permit eligibility determination; review of permit applications; eligibility for provisionally issued permits;

criteria for permit approval or denial; initial review and finding requirements for improvidently issued permits; notice requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; unanticipated events or conditions at remaining sites; verification of ownership or control application information; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance requirements for permittees; backfilling and grading: previously mined areas; and alternative enforcement. Mississippi intends to revise its program to be no less effective than the Federal regulations and to improve operational efficiency.

This document gives the times and locations of the Mississippi program and this 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 on this amendment until 4:00 p.m., c.d.t., [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a

hearing until 4:00 p.m., c.d.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. MS-023-FOR, by any of the following methods:

- Mail/Hand Delivery: Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209; Telephone: (205) 290-7282
- Fax: (205) 290-7280
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Mississippi program, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address of our Birmingham Field Office listed above 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 or going to www.regulations.gov.

Sherry Wilson, Director

Birmingham Field Office

Office of Surface Mining Reclamation and Enforcement

135 Gemini Circle, Suite 215

Homewood, Alabama 35209

Telephone: (205) 290-7282

E-mail: swilson@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mississippi Office of Geology

Department of Environmental Quality

700 N. State Street

Jackson, Mississippi 39202

Telephone: (601) 961-5519

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

SUPPLEMENTARY INFORMATION:

- I. Background on Mississippi Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its 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 effective September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Mississippi program in the September 4, 1980, Federal Register (45 FR 58520). You can also find later actions

concerning the Mississippi program and program amendments at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Description of the Proposed Mississippi Amendment

By e-mail dated July 26, 2012 (Administrative Record No. MS-0423), Mississippi sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 et seq.). Mississippi submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. MS-0420-02) that OSM sent to Mississippi in accordance with 30 CFR 732.17(c), with an additional change submitted on its own initiative. Below is a summary of the changes proposed by Mississippi. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

Mississippi proposes to revise its Surface Coal Mining Regulations in the following sections:

A. Mississippi Surface Coal Mining Regulations §105. Definitions

Mississippi proposes to modify this section by changing language, adding new language, or deleting language for the definitions of Applicant Violator System or AVS; Knowing or Knowingly; Knowingly; Ownership or Control Link;

Previously mined area; Slope; Violation; and Willfully.

B. Mississippi Surface Coal Mining Regulations §2305. Identification of Interests

Mississippi proposes to add additional language requiring the identification of interests for the applicant and operator, and the entry of the applicants information into the Applicant/Violator System (AVS).

C. Mississippi Surface Coal Mining Regulations §2902. Lands Eligible for Remining

Mississippi proposes to add a new section regarding lands eligible for remining.

D. Mississippi Surface Coal Mining Regulations §3102. Permit Eligibility Determination

Mississippi proposes to add a new section regarding permit eligibility determination.

E. Mississippi Surface Coal Mining Regulations §3112. Review of Permit Applications

Mississippi proposes to renumber section §3113 as §3112.

F. Mississippi Surface Coal Mining Regulations §3113. Eligibility for Provisionally Issued Permits

Mississippi proposes to add this new section regarding an applicant's eligibility for a provisionally issued permit.

G. Mississippi Surface Coal Mining Regulations §3115. Criteria for Permit Approval or Denial

Mississippi proposes to add new language regarding permit approval for remaining operations.

H. Mississippi Surface Coal Mining Regulations §3127. Initial Review and Finding Requirements for Improvidently Issued Permits

Mississippi proposes to delete old language regarding general procedures for improvidently issued permits and insert new language regarding initial review and finding requirements for improvidently issued permits.

I. Mississippi Surface Coal Mining Regulations §3128. Notice Requirements for Improvidently Issued Permits

Mississippi has proposed to add a new section regarding the notice requirements for improvidently issued permits.

J. Mississippi Surface Coal Mining Regulations §3129. Suspension or Rescission Requirements for Improvidently Issued Permits

Mississippi proposes to change the language of this section regarding suspension and rescission requirements for improvidently issued permits.

K. Mississippi Surface Coal Mining Regulations §3130. Unanticipated Events or Conditions at Remining Sites

Mississippi proposes to add this new section regarding unanticipated events or conditions at remining sites.

L. Mississippi Surface Coal Mining Regulations §3131. Verification of Ownership or Control Application Information

Mississippi proposes to change language in this section regarding the determination of additional owners or controllers and their identification information for entry into AVS if the applicant or operators do not have previous

mining experience.

M. Mississippi Surface Coal Mining Regulations §3133. Who May Challenge Ownership or Control Listings and Findings

Mississippi proposes to delete language in this section regarding the review of ownership or control and violation information, and add language regarding who may challenge an ownership or control listing or finding.

N. Mississippi Surface Coal Mining Regulations §3135. How to Challenge an Ownership or Control Listing or Finding

Mississippi proposes to delete language in this section regarding procedures for challenging ownership or control links in AVS and add language regarding how to challenge ownership or control listings or findings.

O. Mississippi Surface Coal Mining Regulations §3136. Burden of Proof for Ownership or Control Challenges

Mississippi proposes to delete language from this section regarding written agency decisions on challenges to ownership or control listings or findings and add new language regarding the burden of proof for ownership or control

challenges.

- P. Mississippi Surface Coal Mining Regulations §3137. Written Agency Decision on Challenges to Ownership or Control Listings or Findings

Mississippi proposes to delete language from this section regarding standards for challenging ownership or control links and the status of violations, and add new language regarding written agency decisions on challenges to ownership or control listings or findings.

- Q. Mississippi Surface Coal Mining Regulations §3138. Post-Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

Mississippi proposes to add this new section regarding post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

- R. Mississippi Surface Coal Mining Regulations §3139. Post-Permit Issuance Requirements for Permittees

Mississippi proposes to add this new section regarding post-permit issuance

requirements for permittees.

- S. Mississippi Surface Coal Mining Regulations §5396. Backfilling and Grading:
Previously Mined Areas

Mississippi proposes to add this new section regarding backfilling and grading requirements on previously mined areas.

- T. Mississippi Surface Coal Mining Regulations Chapter 73. Alternative
Enforcement

Mississippi proposes to add this new chapter regarding alternative enforcement by adding new sections §7301 Scope, §7303 General Provisions, §7305 Criminal Penalties, and §7307 Civil Actions for Relief.

III. Public Comment Procedures

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

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be 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 everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please

request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will 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 (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Paul J. Ehret, Acting Regional Director

Mid-Continent Region

July 31, 2012 _____

Date

[FR Doc. 2012-23077 Filed 09/18/2012 at 8:45 am; Publication Date: 09/19/2012]