

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Kent County International Airport.

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Issued in Des Plaines, Illinois on November 24, 1997.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 901**

[SPATS No. AL-067-FOR]

**Alabama Regulatory Program**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Alabama regulatory program (hereinafter referred to as the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to the Alabama Surface Mining Commission Rules pertaining to hearing orders and decisions, license application requirements, procedures for permit application review, determination of bond forfeiture amount, surface and ground water monitoring, disposal of excess spoil, and coal mine waste. The amendment is intended to revise the Alabama program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

**EFFECTIVE DATE:** December 22, 1997.

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

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Alabama Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Alabama Program**

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

**II. Submission of the Proposed Amendment**

By letter dated March 28, 1997 (Administrative Record No. AL-0562), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the April 25, 1997, **Federal Register** (62 FR 20138), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 27, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to hearing orders and decisions (Rule 880-X-5A-.22), and placement of coal mine waste on refuse piles (Rules 880-X-10C-.40 and 880-X-10D-.36). OSM notified Alabama of these concerns by telephone and fax on June 16, 1997 (Administrative Record No. AL-0570).

By letter dated July 9, 1997 (Administrative Record No. AL-0560), Alabama responded to OSM's concerns regarding placement of coal mine waste on refuse piles by submitting additional explanatory information to its proposed program amendment. Regarding OSM's concerns on hearing orders and decisions, Alabama submitted an emergency rule, on July 30, 1997 (Administrative Record No. AL-0572), that changed the number of days in which hearing officers are to furnish written decisions on hearings from 60 days to 30 days. Based upon the additional explanatory information and/or revisions to the proposed program amendment submitted by Alabama, OSM reopened the public comment period in the October 17, 1997, **Federal Register** (62 FR 53996). The public comment period closed on November 3, 1997.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

*A. Nonsubstantive Revisions to the Alabama Program*

Alabama proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes:

Topic	State regulations	Federal counterpart regulations
Procedures for Permit Application Review .....	880-X-7B-.07(5) .....	30 CFR 761.12(e)(1)-(e)(3).
Determination of Forfeiture Amount .....	880-X-9E-.05(2) and (3) .....	30 CFR 800.50(d)(1) and (d)(2).
Hydrologic Ground Water Monitoring .....	880-X-10C-.23(2)(a) .....	30 CFR 816.41(e)(1).
Disposal of Excess Spoil .....	880-X-10C-.36(13)(b) and (b)(1) and (15)(B)(3).	30 CFR 816.71(i) and 816.74(h)(4).
Disposal of Excess Spoil and Underground Development Waste.	880-X-10D-.33(13)(b) and (b)(1) and (15)(b)(3).	30 CFR 817.71(i) and 817.74(h)(4).

Because Alabama's proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that the proposed revisions do not render Alabama's rules less effective than the Federal regulations.

*B. Revisions to Alabama's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations Rules 880-X-10C-.40 and 880-X-10D-.36 Cost Mine Waste: Refuse Piles*

At paragraphs (3)(a), Alabama proposed an exception to the

requirement that limits coal mine operators from spreading coal mine waste in layers thicker than 24 inches. If engineering data substantiates a minimum safety factor of 1.5 for the refuse pile, the State regulatory authority may approve layers exceeding 24 inches in thickness. The Federal

regulations at 30 CFR 816.83 and 817.83 require refuse piles to meet the requirements of 816.81 and 817.81, respectively. At 30 CFR 816.81(c)(2) and 817.81(c)(2), respectively, a disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The Director is approving Alabama's proposed exception because it is no less effective than the Federal regulations.

#### *C. Revisions to Alabama's Regulations With No Corresponding Federal Regulations*

##### 1. Rule 880-X-5A-.22 Orders and Decisions

Alabama proposed to replace the existing requirements with the following new requirements. At paragraph (1)(a), the hearing officer is to make a written decision within 30 days after the close of "any" hearing. OSM has regulations for hearings that provide time frames of 30 or 60 days in which written decisions must be furnished to the participants of the hearing based upon the reason the hearing is being held. For example, the Federal regulation at 30 CFR 775.11(b)(4) regarding administrative review of decisions on permits require that decisions be made, in writing, within 30 days after these hearings. As another example, the Federal regulation at 30 CFR 769.18 regarding decisions on petitions for designating lands unsuitable for mining requires that a written decision be made within 60 days of the completion of the hearing. The Director finds that Alabama's proposal for requiring decisions to be made within 30 days after the close of "any" hearing is no less effective than the Federal regulations and is approving it.

At paragraph (1)(b), Alabama proposed that the Division of Hearings and Appeals (DHA) provide copies of all orders of the hearing officer to all parties. Parties other than the regulatory authority will receive copies of the orders by the first class mail. The Federal regulations at 30 CFR 769.18(b) regarding decisions on petitions for designating lands unsuitable for mining and 30 CFR 775.11(b)(4) regarding administrative review of decisions on permits, require written hearing decisions to be sent to each person who participated in the hearing. The Director finds that Alabama's proposed amendment is not inconsistent with the Federal regulations and is approving it.

At paragraph (2), Alabama proposed that any party may petition the Commission for an expedited review of any pending appeal if the hearing officer

fails to render a decision within the time specified in paragraph (1)(a). OSM does not have a counterpart Federal regulation that provides for an expedited review of any pending appeal if the hearing officer fails to render a decision within specified time frames. The Director finds that Alabama's proposed regulation is not inconsistent with the Federal regulations and is approving it.

##### 2. Rule 880-X-6A-.06 License Application Requirements

At paragraph (k), Alabama proposed to replace the reference to "Chapter 880-X-7" with the corrected reference to "Chapter 880-X-8." The Director is approving this correction.

##### 3. Rule 880-X-10C-.36 Disposal of Excess Spoil and 880-X-10D-.33 Disposal of Excess Spoil and Underground Development Waste

At paragraphs (16)(a) in the first sentence, Alabama proposed to remove the language "in natural ground along the periphery of the fill." The Director is approving the removal of this language because there is no Federal counterpart and because the removal of this language will not render the Alabama program less effective than the Federal regulations.

##### 4. Rules 880-X-10C-.38 and 880-X-10D-.34 Coal Mine Waste: General Requirements

Alabama proposed to remove existing paragraphs (1)(d) for its regulations and to redesignate existing paragraphs (1)(e) and (1)(f) as paragraph (1)(d) and (1)(e), respectively. The Director is approving these revisions because there is no Federal counterpart regulation to existing paragraph (d) that the State proposed to remove and because its removal will not render the Alabama program less effective than the Federal regulations.

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

##### *Public Comments*

OSM solicited public comments on the proposed amendment. No public comments were received.

##### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal Agencies with an actual or potential interest in the Alabama program. OSM received comments from the U.S. Fish and Wildlife Service dated April 24, 1997 (Administrative Record No. AL-0564), and the U.S. Department of Labor Mine Safety and Health

Administration dated May 5, 1997 (Administrative Record No. AL-0565). The agencies stated that they either had no comments or no concerns regarding the amendment.

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. AL-0563). The EPA did not respond to OSM's request.

##### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. AL-0563). The ACHP did not respond to OSM's request. OSM received a comment dated June 3, 1997, from the Alabama Historical Commission (Administrative Record No. AL-0567). The Alabama Historical Commission felt that properties eligible for inclusion on the National Register along with properties listed on the National Register should be included in the Alabama Surface Mining Commission Rules regarding procedures for areas unsuitable for mining at 880-X-7B-.07(6)(a). The Alabama Historical Commission felt that this inclusion of properties would be appropriate because it would conform with the Advisory Council on Historic Properties' regulations at 36 CFR Part 800. In response to these comments, Alabama did not propose to amend its regulation at 880-X-7B-.07(6)(a) which is substantially identical to the Federal regulation at 30 CFR 761.12(f)(1), and, therefore, is not inconsistent with the Federal requirement. Also, in acting on State program amendments, the Directory only addresses those sections of a State's laws and regulations where revisions are proposed by the State.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Alabama on March 28, 1997, and as revised on July 9 and 30, 1997.

The Director approves the rules as proposed by Alabama with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Director is also taking this opportunity to correct editorial errors in the required regulatory program amendments section at 30 CFR 901.16.

The Federal regulations at 30 CFR Part 901, codifying decisions concerning the Alabama program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*Executive Order 12866*

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

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and

program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

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

**List of Subjects in 30 CFR Part 901**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 25, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

**PART 901—ALABAMA**

1. The authority citation for Part 901 continues to read as follows:

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

2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 901.15 Approval of Alabama regulatory program amendments.**

\* \* \* \* \*

Original amendment sub- mission date	Date of final publication	Citation/description
March 28, 1997 .....	December 22, 1997 .....	880-X-5A-.22(1)(a), (1)(b) and (2); 880-X-6A-.06(k); 880-X-7B-.07(5); 880-X-9E-.05(2) and (3); 880-X-10C-.23(2)(a), .36(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .38(1)(d) through (1)(f), .40(3)(a); 880-X-10D-.33(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .34(1)(d) through (1)(f), and .36(3)(a)

§ 901.16 Removed and [Reserved]

3. The text of § 901.16 is removed and the section and section heading are reserved.

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Dated: December 17, 1997.

**Marilyn J. Kretsinger,**

*Assistant General Counsel.*

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 97-8]

Registration of Claims to Copyright: Group Registration of Serials

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendment.

SUMMARY: The Copyright Office is making a technical amendment to one of the addresses designated in the group registration procedures.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor to the General Counsel, Copyright GC/I&R P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: In 1990, the Copyright Office adopted a new registration procedure which permitted group registration of serial publications under certain conditions. 55 FR 50556 (1990). This procedure is part of the regulations of the Copyright Office at 37 CFR Chap. II, §§ 202.3(b)(5) and 202.20(c)(2)(xvii). This document amends the address to which the complimentary subscriptions must be mailed.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Registration.

Technical Amendment

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.3 [Amended]

2. Section 202.3(b)(5)(iii) is amended to add “-4161,” after “20540”.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY 26-2-176a; FRL-5936-8]

Determination of Attainment of the One-Hour Ozone Standard for the Poughkeepsie, New York Ozone Nonattainment Area and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Poughkeepsie moderate ozone nonattainment area in New York has attained the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality assured ambient air monitoring data for the years 1995-97. This data demonstrates that the one-hour ozone NAAQS has been attained in this area. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act are not applicable to this area.

In the proposed rules section of this Federal Register, EPA is proposing this determination and soliciting public comment on it. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this Federal Register.

DATES: This action will be effective February 5, 1998 unless adverse or critical comments are received by January 21, 1998. If the effective date is delayed, a timely document will be published in the Federal Register.

ADDRESSES: Written comments should be mailed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007-1866.

Copies of the relevant material for this notice are available for inspection during normal business hours at: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, at the above address. Phone: 212-637-4249.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. EPA has interpreted provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the one-hour ozone standard (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” EPA has interpreted the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP “means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is