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**Nicholas A. Sabatini,**

*Director, Flight Standards Service.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 901

[SPATS No. AL-071-FOR]

#### Alabama Regulatory Program

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to and additions of regulations concerning valid existing rights. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

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

**DATES:** We will accept written comments until 4 p.m., c.d.t., November 19, 2001. If requested, we will hold a public hearing on the amendment on November 13, 2001. We will accept requests to speak at the hearing until 4 p.m., c.d.t. on November 2, 2001.

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

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

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

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502-2390, Telephone (205) 221-4130.

#### FOR FURTHER INFORMATION CONTACT:

Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290-7282. Internet: [aabbs@osmre.gov](mailto:aabbs@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the Alabama program at 30 CFR 901.15 and 901.16.

##### II. Description of the Proposed Amendment

By letter dated August 29, 2001 (Administrative Record No. AL-0647), Alabama sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. AL-0644), that we sent to Alabama under 30 CFR 732.17(c). Alabama proposes to amend the Alabama Surface Mining Commission (ASMC) Rules. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

##### A. 880-X-2A-.06, Definitions

Alabama proposes to add a definition for “significant recreational, timber, economic, or other values incompatible with surface coal mining operations.”

Alabama also proposes to revise its definition of “valid existing rights.”

##### B. 880-X-7B-.06, Areas Where Surface Coal Mining Operations Are Prohibited or Limited

Alabama proposes to revise the language in this section to describe the lands where surface coal mining operations may not be conducted, except as provided under 880-X-7B-.11 and 880-X-7B-.07.

##### C. 880-X-7B-.07, Exception for Existing Operations

Alabama proposes to revise the language in this section to describe those surface coal mining operations that the provisions of 880-X-7B-.06 do not apply.

##### D. 880-X-7B-.08, Procedures for Compatibility Finding for Surface Coal Mining Operations on Federal Lands in National Forests

Alabama proposes to add this new section to describe the procedures an applicant for a surface coal mining operation permit and the regulatory authority must follow when an applicant intends to claim the exception provided in 880-X-7B-.06(b) to conduct surface coal mining operations on Federal lands within a national forest.

##### E. 880-X-7B-.09, Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road

Alabama proposes to add this new section to describe the procedures an applicant for a surface coal mining operation permit and the regulatory authority must follow when an applicant proposes to relocate or close a public road, or conduct surface coal mining operations with 100 feet, measured horizontally, of the outside right-of-way line of a public road.

##### F. 880-X-7B-.10, Procedures for Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of an Occupied Dwelling

Alabama proposes to add this new section to describe the procedures applicants for surface coal mining operation permits must follow when they propose to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling.

*G. 880-X-7B-.11, Submission and Processing of Requests for Valid Rights Determinations*

Alabama proposes to add this new section to describe the procedures applicants for surface coal mining operation permits must follow when requesting a valid existing rights determination. This section also describes the procedures the regulatory authority will follow when making a valid existing rights determination.

*H. 880-X-7B-.12, Regulatory Authority Obligations at Time of Permit Application Review*

Alabama proposes to add this new section to describe the procedures the regulatory authority must follow when it receives an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit.

*I. 880-X-8C-.05, Exploration: General Requirements for Removal of More Than 250 Tons and Disturbance of More Than One-Half Acre or on Lands Designated Unsuitable for Surface Mining Operations*

Section 880-X-8C-.05 requires any person who intends to conduct coal exploration outside a permit area to apply for a permit. Alabama proposes to add new paragraph 880-X-8C-.05(1)(g) to require applicants for a coal exploration permit to submit, as part of their permit application, a demonstration that, for those lands listed at 880-X-7B-.06, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. Furthermore, applicants must provide documentation that they have consulted with the owner of the feature causing the land to come under the protection of 880-X-7B-.06, as well as the regulatory authority with primary jurisdiction over the feature, when applicable.

*J. 880-X-8C-.06, Applications: Approval or Disapproval of Exploration of More Than 250 Tons*

Section 880-X-8C-.06 describes the procedures the regulatory authority must follow when it receives an application for a coal exploration permit. Alabama proposes to add new paragraph 880-X-8C-.06(2)(e) to require the regulatory authority to find, prior to approving a coal exploration permit, that the applicant has demonstrated that, for those lands listed at 880-X-7B-.06, the exploration and reclamation

described in the application minimizes interference with the values for which those lands were designated as unsuitable for surface coal mining operations. Furthermore, the regulatory authority must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 880-X-7B-.06, as well as the regulatory authority with primary jurisdiction over the feature, to comment on whether the finding is appropriate.

*K. 880-X-8D-.08, Relationship to Areas Designated Unsuitable for Mining*

Alabama proposes to revise the language in paragraph 880-X-8D-.08(3) to require those applicants for surface coal mining operation permits that propose to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling to meet the requirements of 880-X-7B-.09 or 800-X-7B-.10, respectively.

*L. 800-X-8F-.14, Protection of Public Parks and Historic Places*

Alabama proposes to revise the language in paragraph 880-X-8F-.14(1)(b) to read as follows:

(b) If a person has valid existing rights, as determined under Rule 880-X-7B-.11 of these regulations, or if joint regulatory authority approval is to be obtained under Rule 880-X-7B-.12(d) of these regulations, to minimize adverse impacts.

*M. 880-X-8I-.15, Relocation or Use of Public Roads*

Alabama proposes to revise the reference in the introductory language of this section from "880-X-7B-.07(4)" to "880-X-7B-.09."

*N. 880-X-8K-.05, Public Participation in Permit Processing*

Alabama proposes to revise the reference in paragraph 880-X-8K-.05(1)(a)5 from "880-X-7B-.07(4)" to "880-X-7B-.09."

*O. 880-X-8K-.10, Review of Permit Applications*

Alabama proposes to remove the phrase "and section 880-X-7B-.07" from the language found in paragraph 880-X-8K-.10(3)(c)2.

### III. Public Comment Procedures

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

*Written Comments:* If you submit written or electronic comments on the

proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

*Electronic Comments:* Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. AL-071-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290-7282.

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

*Public Hearing:* If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on November 2, 2001. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

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

hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

#### IV. Procedural Determinations

##### *Executive Order 12866—Regulatory Planning and Review*

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

##### *Executive Order 12630—Takings*

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

##### *Executive Order 13132—Federalism*

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

##### *Executive Order 12988—Civil Justice Reform*

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

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

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

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

##### *National Environmental Policy Act*

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

##### *Paperwork Reduction Act*

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

##### *Regulatory Flexibility Act*

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

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

##### *Small Business Regulatory Enforcement Fairness Act*

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

a. Does not have an annual effect on the economy of \$100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

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

##### *Unfunded Mandates*

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

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2001.

**Charles E. Sandberg,**

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

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 70**

**[ME-063-7012b; A-1-FRL-7085-6]**

### **Clean Air Act Final Approval of Operating Permits Program; State of Maine**

**AGENCY:** Environmental Protection Agency (EPA).