

regulations to add a definition for the term seabird. The term seabird is used in existing Sanctuary prohibitions against takings (e.g., harassment), however the term is not defined. The Final Environmental Impact Statement (FEIS) for the designation and regulation of the OCNMS at pages II-61 through II-65 discusses in detail seabirds, shorebirds, waterfowl, and birds of prey as Sanctuary resources, all under the heading of "marine birds." Further, the regulations for the Sanctuary define "Sanctuary resource" expressly to include birds. In order to clarify the regulatory intent that the Sanctuary regulations protect all the avian species of the Sanctuary identified in the FEIS, the proposed rule would amend the Sanctuary regulations to define the term seabird as any member of any species of marine birds that spend part or all of their life cycle (i.e., feeding, resting, migrating, and/or breeding) in or over the Olympic Coast National Marine Sanctuary.

The definitional change would have no substantive impact on small businesses. The proposed rule would merely clarify the scope of an existing term, consistent with the FEIS for the Sanctuary, thus providing clear notice of the scope of existing Sanctuary prohibitions.

Accordingly, an Initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act and was not prepared.

#### *Paperwork Reduction Act*

This amendment of 15 CFR Part 922 would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

#### *National Environmental Policy Act*

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, preparation of an environmental impact statement is not required.

#### **List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 14, 1998.

**Evelyn J. Fields,**

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

#### **PART 922—[AMENDED]**

1. The authority citation for Part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

#### **Subpart O—Olympic Coast National Marine Sanctuary**

2. Section 922.151 is amended by adding the definition of *Seabird* in alphabetical order, to read as follows:

##### **§ 922.151 Definitions.**

\* \* \* \* \*

*Seabird* means any member of any species of marine birds that spend part or all of their life cycle (i.e., feeding, resting, migrating, and/or breeding) in or over the Olympic Coast National Marine Sanctuary, including but not limited to alclids, tubenoses (e.g., albatrosses and shearwaters) and gulls; shorebirds (e.g., plovers and sandpipers), waterfowl (e.g., ducks and geese) and birds of prey (e.g., bald eagles and peregrine falcons).

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#### **DEPARTMENT OF THE INTERIOR**

##### **Office of Surface Mining Reclamation and Enforcement**

##### **30 CFR Part 901**

[SPATS No. AL-068-FOR]

##### **Alabama Regulatory Program**

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

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

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Alabama regulatory program (hereinafter the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to and additions of regulations pertaining to definitions, petitions to initiate rulemaking license applications, operation plans, reclamation plans, subsidence control,

lands eligible for re-mining, permit applications, small operator assistance program, performance bond release, hydrologic balance, coal mine waste, backfilling and grading, revegetation, soil removal and stockpiling, inspections, and hearings. The amendment is intended to revise the Alabama program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Alabama program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4:00 p.m., c.d.t., September 24, 1998. If requested, a public hearing on the proposed amendment will be held on September 21, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on September 9, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

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

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209.

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502-2390.

**FOR FURTHER INFORMATION CONTACT:** Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290-7282. Internet: aabbs@osmre.gov.

##### **SUPPLEMENTARY INFORMATION:**

##### **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. Description of the Proposed Amendment

By letter dated August 4, 1998 (Administrative Record No. AL-0584), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the amendment in response to a May 20, 1996, letter (Administrative Record No. AL-0555) and a June 17, 1997, letter (Administrative Record No. AL-0568) that OSM sent to Alabama in accordance with 30 CFR 732.17(c) and at its own initiative. Alabama proposes to amend the Alabama Surface Mining Commission (ASMC) Rules. The full text of the proposed program amendment submitted by Alabama is available for public inspection at the locations listed above under **ADDRESSES**. A summary of the proposed amendment is presented below.

### 1. 880-X-2A-06, Definitions

Alabama is adding a definition of "drinking, domestic or residential water supply" to mean "water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use."

Alabama is adding a definition of "lands eligible for re-mining" to mean "those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87."

Alabama is adding a definition of "material damage" to mean "in the context of 880-X-8I-.20 and 880-X-10D-.58, (a) Any functional impairment of surface lands, features, structures or facilities; (b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or (c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition."

Alabama is adding a definition of "non-commercial building" to mean "any building other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in

this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprise is excluded."

Alabama is adding a definition of "occupied residential dwelling and structures related thereto" to mean "for purposes of 880-X-8I-.20 and 880-X-10D-.58, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded."

Alabama is revising the definition of "previously mined area" to mean "land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR Chapter VII."

Alabama is adding a definition of "program administrator" to mean "the Alabama Surface Mining Commission's designee who has the authority and responsibility for overall management of the Small Operator's Assistance Program."

Alabama is adding a definition of "qualified laboratory" to mean "a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 880-X-8N-.10 under the Small Operator's Assistance Program and that meets the standards of 880-X-8N-.11."

Alabama is adding a definition of replacement of water supply" to mean "with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operators, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs

for premining water supplies. (a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner, (b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner."

Alabama is adding a definition of "siltation structure" to mean a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

Finally, Alabama is adding a definition of "unanticipated event or condition" to mean "as used in 880-X-8K-.10 of this chapter, an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for re-mining and was not contemplated by the applicable permit."

### 2. 880-X-2A-.08, Petitions To Initiate Rulemaking

At section 880-X-2A-.08(3), Alabama proposes to add the language "once a week" after the phrase "a notice shall be published in a newspaper of general circulation for the State of Alabama." Also, Alabama is revising section 880-X-2A-.08(4) to require that the State Regulatory Authority, within 60 days from the receipt of the petition, either deny a petition in writing on the merits, stating the reasons for denial, or initiate rulemaking proceedings on the petition.

### 3. 880-X-6A-06, License Application Requirements

At paragraph (d)3., Alabama is correcting the citation reference to 880-X-8K-.11(8).

### 4. 880-X-8F-.08, Surface Mining and 880-X-8I-.07, Underground Mining; Operations Plan: Permit Map(s)

At paragraph (1)(e), Alabama is removing the language "oil wells, gas wells, water wells"; adding the language "and adjacent areas" after the phrase, "or passing over the proposed permit area"; and adding the language "ponds, springs" after the word "lakes."

At paragraph (1)(l), Alabama is revising the language to require the permit map(s) of an application to show the "location and extent of existing or previously surface mined areas within the proposed permit area."

Finally, at paragraph (1)(o), Alabama is revising the language to read:

Location and dimensions or extent of areas of existing and proposed spoil, waste and non-coal waste disposal, dams embankments, settling ponds, and other impoundments, and water treatment and air pollution control facilities, haul roads, and stockpile areas within the proposed permit area.

#### **5. 880-X-8F-.09, Reclamation Plan: General Requirements**

Alabama is adding a second sentence to section 880-X-8F-.09(2)(d) to read as follows:

A demonstration of the suitability of topsoil substitutes or supplements shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Regulatory Authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

#### **6. 880-X-8F-.11, Surface Mining and 880-X-8I-.12, Underground Mining; Reclamation Plan; Siltation Structures, Impoundments, Banks, Dams, and Embankments**

At paragraph (1), Alabama is removing the language "sedimentation pond" and replacing it with the language "siltation structure."

Alabama is revising paragraph (1)(b) to require that impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) comply with the requirements for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration. Alabama is amending paragraph (1)(c) by replacing the reference to "30 CFR 77.216(a)" with a reference to "paragraph (1)(b)."

Alabama is revising the first sentence of paragraph (2) to require that siltation structures be designed in compliance with the requirements of 880-X-10C-.17 under its surface mining rule and 880-X-10D-.17 under its underground mining rule. The second sentence of this paragraph is being removed.

At paragraph (3)(c), Alabama is removing the language "30 CFR 77.216(a) and located where failure would not be expected to cause loss of

life or serious property damage," and replacing it with a reference to "paragraph (1)(b)."

Finally, Alabama is amending paragraph (6) by replacing the language "[I]f the structure is 20 feet or higher or impounds more than 20 acre feet, each plan under Paragraph (2), (3), and (5) of this Section shall include a stability analysis of each structure" with the language "[I]f the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under paragraphs (2), (3), and (5) of this section shall include a stability analysis of the structure."

#### **7. 880-X-8F-.20, Surface Mining and 880-X-8I-.20, Underground Mining Additional Cross Sections, Maps, and Plans**

Alabama is adding a new section requiring the inclusion of additional cross sections, maps, and plans in the permit application. At paragraph (1), the cross sections, maps, and plans must show the following information: elevations and locations of test borings and core samplings; elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required; nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of overburden, and the stratum immediately below the lowest coal seam to be mined; all coal crop lines and the strike and dip of the coal to be mined within the proposed permit area; location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas; and location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area. Paragraph (2) provides that the information required in paragraph (1) may be shown on the permit maps required by 880-X-8F-.08 under its surface mining rules or 880-X-8I-.07 under its underground mining rules.

#### **8. 880-X-8H-.06, Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequence (PHC)**

Alabama is requiring the PHC determination to include the following finding at 880-X-8H-.06(1)(e)3.(iv):

Whether the underground mining activities conducted after October 24, 1992, may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used

for domestic, drinking, or residential purposes within the permit or adjacent areas.

#### **9. 880-X-8I.10, Subsidence Control Plan**

Alabama is adding new provisions at paragraph (1) to require a pre-subsidence survey in each underground coal mining permit application.

Paragraph (1)(a) requires a map of the permit and adjacent areas showing the location and type of structures and renewable resource lands that subsidence may materially damage or diminish in value. The map must also show the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

Paragraph (1)(b) requires a narrative indicating whether subsidence could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands. The narrative must also indicate whether subsidence could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

Paragraph (1)(c) requires a survey of the condition of all non-commercial buildings or occupied residential dwellings and associated structures that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw. It also requires a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make these surveys because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in 880-X-10D-.58(3)(d). The applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining conditions or values of the above buildings, dwellings, structures, or water supplies. The applicant also must provide copies of the surveys and technical assessments or engineering evaluations to the property owners and the Regulatory Authority.

Alabama is amending the existing introductory language of 880-X-8I-.10 and redesignating it as paragraph (2). The first sentence is being removed, and the second sentence is being revised by adding the language "conducted under paragraph (1) of this section" after the word "survey." Existing paragraphs (1) through (8) are being redesignated as paragraphs (2)(a) through (i) with the following changes. New paragraph (2)(g)

requires a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and associated structures or the written consent of the owner of the structure or facility that minimization measures not be taken. This description or written consent may not be needed if the applicant can demonstrate that the costs of minimizing damage exceed the anticipated costs of repair, unless the anticipated damage would constitute a threat to health or safety. Existing paragraph (7) is being redesignated as paragraph (2)(h) and is being amended to require a description of the measures to be taken in accordance with 880-X-10D-.12(10) and 880-X-10D-.58(3) to replace adversely protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures.

#### *10. 880-X-8J-.13, Lands Eligible for Remining*

Paragraph (1) covers the scope of this new section. This section contains permitting requirements to implement 880-X-8K-.10(2)(d). Persons who submit a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.

Paragraph (2) provides that any application for a permit under this section must be made according to all requirements applicable to surface coal mining and reclamation operations and the additional requirements of paragraphs (2)(a), (b), and (c). Paragraph (2)(a) requires that to the extent not otherwise addressed in the permit application, the applicant is to identify potential environmental and safety problems related to prior mining activity at the site that could be reasonably anticipated to occur. The identification is to be based on an investigation which includes visual observations, a record review of past mining, and environmental sampling. Paragraph (2)(b) requires a description of the mitigative measures that will be taken to ensure the applicable reclamation requirements can be met if potential environmental and safety problems are identified in paragraph (2)(a). Paragraph (2)(c) provides that the requirements of this section shall not apply after September 30, 2004.

#### *11. 880-X-8K.10, Review of Permit Applications*

Alabama is adding a new provision at paragraph (2)(d). Paragraph (2)(d)1. provides that subsequent to October 24, 1992, the prohibitions of paragraph (2) shall not apply to any violation that

occurs after that date, is unabated, and results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit. The permit must be issued before September 30, 2004, or any renewals thereof, and held by the person making application for the new permit. Paragraph (2)(d)2. provides that for permits issued under 880-X-8J-.13, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it arose after permit issuance, was related to prior mining, and was not identified in the permit.

Alabama is adding a new provision at paragraph (3)(m) that specifies the permit application requirements for permits issued under 880-X-8J-.13. Paragraph (3)(m)1. requires the permit application to contain lands eligible for remining. Paragraph (3)(m)2. requires the application to contain an identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site. Paragraph (3)(m)3. requires mitigation plans to sufficiently address potential environmental and safety problems so that reclamation can be accomplished.

#### *12. 880-X-8N-.07, Small Operator Assistance Program; Eligibility for Assistance.*

Alabama is amending paragraph (c) by removing the existing first sentence and adding the following sentence:

Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons.

Alabama is removing the language in existing paragraph (c)1. and is redesignating paragraph (c)2. as paragraph (c)1. with the following changes: the word "beneficial" is removed; the phrase "of the applicant" is added after the word "ownership"; and the percent of ownership is changed to 10 percent.

New paragraph (c)2. provides that production from the pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation shall be attributed to the permittee.

Alabama is removing existing paragraph (c)3. New paragraph (c)3. provides that production from all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of

direction of the management shall be attributed to the permittee.

Alabama is removing paragraph (c)4. and redesignating paragraph (c)5. as paragraph (c)4.

Alabama is adding a new provision at paragraph (d) to provide that the applicant is eligible for assistance if he is not restricted in any manner from receiving a permit under the permanent regulatory program. Existing paragraph (d) is redesignated as paragraph (e).

#### *13. 880-X-8N-.10, Small Operator Assistance Program; Data Requirements*

Alabama is removing the existing requirements under 880-X-8N-.10 and adding new requirements. Paragraph (1) provides that to the extent possible with available funds, the Program Administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (2) of this section for eligible operators who request assistance.

Paragraph (2) requires the Program Administrator to determine the data needed for each applicant or group of applicants. It also requires that the data collected shall be sufficient to satisfy the requirements of paragraphs (2)(a) through (f). Paragraph (2)(a) requires the determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with 880-X-8E-.06(f), 880-X-8H-.06(1)(e) and any other applicable provisions of these regulations. Paragraph (2)(b) requires the drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with 880-X-8E-.06(2)(b) and 880-X-8H-.06(2)(b) and any other applicable provisions of these regulations. Paragraph (2)(c) requires the development of cross-section maps and plans for the information required by 880-X-8F-.08(e), (l), (m) and (o) and 880-X-8F-.20, or 880-X-8I-.07(e), (l), (m) and (o) and 880-X-8I-.20. Paragraph (2)(d) requires the collection of archaeological and historic information and related plans required by 880-X-8E-.05 and 880-X-8H-.05 and 880-X-8F-.14 and 880-X-8I-.14 and any other archaeological and historic information required by the Regulatory Authority. Paragraph (2)(e) requires pre-blast surveys required by 880-X-10C-.31. Paragraph (2)(f) requires the collection of site-specific resources information, protection and enhancement plans for fish and wildlife habitats required by 880-X-8E-.11 and

880-X-8F-.18, and information and plans for any other environmental values required by the Regulatory Authority.

Paragraph (3) provides that data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

Paragraph (4) provides that data collected under this program shall be made publicly available in accordance with 880-X-8K-.05(4) and that the Regulatory Authority shall develop procedures for interstate coordination and exchange of data.

#### 14. 880-X-8N-.13, *Small Operator Assistance Program; Applicant Liability*

Alabama is revising paragraph (1) by requiring the applicant to reimburse the Regulatory Authority for the cost of the services if any of the conditions specified in paragraphs (1)(a) through (f) occur. New paragraph (1)(c) is being added to require reimbursement if the applicant fails to submit a permit application within one year from the date of receipt of the approved laboratory report. Existing paragraphs (1)(c) through (e) are being redesignated as paragraphs (1)(d) through (f). Redesignated paragraph (1)(e) is being revised to require reimbursement if "the Program Administrator finds that the applicant's actual and attributed annual production of coal exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit." Redesignated paragraph (1)(f) is being revised to require reimbursement if "the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed tonnage exceeds the 300,000 annual production limit during the twelve months immediately following the date on which the permit was originally issued."

Alabama is revising paragraph (2) by replacing the language "Regulatory Authority" with the language "Program Administrator."

#### 15. 880-X-9D-.02, *Procedures for Seeking Release of Performance Bond*

At new paragraph (1)(c), Alabama requires the permittee to include in each application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Existing paragraph (1)(c) is redesignated as paragraph (1)(d).

#### 16. 880-X-10C-.17, *Surface Mining and 880-X-10D-.17, Underground Mining; Hydrologic Balance: Siltation Structures*

Alabama is removing and reserving paragraph (1)(a). Alabama further revises paragraph (1)(c) to read as follows:

Other treatment facilities mean any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized: 1. To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or 2. To comply with all applicable State and Federal water-quality laws and regulations.

Finally, Alabama is revising paragraph (3)(b) to require sedimentation ponds to include either a combination of principal and emergency spillways or a single spillway configured as specified in 880-X-10C-.20(1)(i) for the surface mining rule and 880-X-10D-.20(1)(i) for the underground mining rule. The language found at 880-X-10C-.17(3)(b)1., 2., and 3. and 880-X-10D-.17(3)(b)1., 2., and 3. is removed.

#### 17. 880-X-10C-.20, *Surface Mining and 880-X-10D-.20, Underground Mining; Impoundments*

Alabama is adding a new paragraph at (1)(a) that requires impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," 1985 to comply with "Minimum Emergency Spillway Hydrologic Criteria" table in the TR-60 and the requirements of this section.

Existing paragraphs (1)(a) through (1) are redesignated as paragraphs (1)(b) through (m). Paragraph (1)(d)1. is revised by adding the language "the Class B or C criteria for Dams in TR-60, or" after the phrase "[A]n impoundment meeting." Further, the language "or located where failure would be expected to cause loss of life or serious property damage" is removed. Paragraph (1)(d)2. is revised by removing the language "meeting the size or other criteria of 30 CFR 77.216(a)" and replacing it with the phrase "included in paragraph (1)(d)1. of this section." Further, the language "and located where failure would be expected to cause loss of life or serious property damage" is removed.

A second sentence is added at paragraph (1)(e) to require impoundments meeting the Class B or C criteria for dams in TR-60 to comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

The second sentence of paragraph (1)(f)1. is revised by adding the language "the Class B or C criteria for dams in TR-60, or" after the phrase "[F]or an impoundment meeting."

The following new provision is added at paragraph (1)(i)2.(i):

For an impoundment meeting the Class B or C criteria for dams in the TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Regulatory Authority.

Existing paragraphs (1)(i)2.(i) and (ii) are redesignated as paragraphs (1)(i)2.(ii) and (iii). At redesignated paragraph (1)(i)2.(iii), the reference to "30 CFR 77.216(a)" is removed and replaced by a reference to "paragraphs (1)(i)2.(i) and (ii) above."

Paragraph (1)(l) is revised to read as follows:

Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for appearance of structural weakness and other hazardous conditions.

Paragraph (3)(b)1. is revised by adding the language "the SCS Class B or C criteria for dams in TR-60, or" after the phrase "[I]n the case of an impoundment meeting." Finally, paragraph (3)(b)2. is revised by removing the language "meeting the size or other criteria of 30 CFR 77.216(a)" and replacing it with the phrase "included in paragraph (3)(b)1. of this section."

#### 18. 880-X-10C-.38, *Surface Mining and 880-X-10D-.34, Underground Mining; Coal Mine Waste: General Requirements*

Alabama is revising the second sentence of paragraph (1) to require coal mine waste to be hauled or conveyed and placed for final placement in a controlled manner.

#### 19. 880-X-10C-.54, *Backfilling and Grading: Thin Overburden*

Alabama is removing the existing requirements and adding the following definition and performance standards for thin overburden:

(1) Definition. Thin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the

thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (a) Closely resemble the surface configuration of the land prior to mining, or (b) Blend into and complement the drainage pattern of the surrounding terrain.

(2) Performance standards. Where thin overburden occurs within the permit area, the permittee at a minimum shall: (a) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and (b) Meet the requirements of 880-X-10C-.53(1)(b) through (10).

**20. 880-X-10C-.55, Backfilling and Grading: Thick Overburden**

Alabama is removing the existing requirements and adding the following definition and performance standards for thick overburden:

(1) Definition. Thick overburden means more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (a) Closely resemble the surface configuration of the land prior to mining; or (b) Blend into and complement the drainage pattern of the surrounding terrain.

(2) Performance standards. Where thick overburden occurs within the permit area, the permittee at a minimum shall: (a) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; (b) Meet the requirements of 880-X-10C-.53(1)(b) through (10); and (c) Dispose of any excess spoil in accordance with Rule 880-X-10C-.36.

**21. 880-X-10C-.62, Surface Mining and 880-X-10D-.56, Underground Mining; Revegetation; Standards for Success**

Alabama is revising Rule 880-X-10C-.62(3) for surface mining and Rule 880-X-10D-.56(3) for underground mining by redesignating the existing language as paragraph (3)(a); amending the existing language by adding the phrase "except as provided in paragraph (3)(b) of this section" after the phrase "for five (5) full years"; and adding the following new provision at paragraph (3)(b):

Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (2)(f) of this section, the lands shall equal or exceed the standards

during the growing season of the last year of the responsibility period.

**22. 880-X-10D-.12, Hydrologic-Balance Protection**

Alabama is adding a new provision at paragraph (9) that requires the permittee to promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the permit application for the activities causing the loss, contamination or interruption was received. Alabama will use the baseline hydrologic and geologic information required in 880-X-8E-.06 and 880-X-8H-.06 to determine the impact of mining activities upon the water supply.

**23. 880-X-10D-.58, Subsidence Control**

Alabama is removing the existing provisions from this section and adding numerous new provisions that pertain to preventing, minimizing, and repairing damage resulting from subsidence.

Paragraph (1) covers measures to prevent or minimize damage. Under this paragraph, the permittee has the alternative of either adopting measures consistent with known technology that prevents subsidence from causing material damage to the extent technologically and economically feasible, or adopting mining technology that provides for planned subsidence in a predictable and controlled manner. If the permittee employs mining technology that provides for planned subsidence, the permittee is required to minimize damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwelling and related structures. If the permittee has the written consent of the owners of such structures or facilities, no measures to protect structures and facilities would be required. Unless the anticipated damage would constitute a threat to health or safety, the permittee would not have to minimize material damage if the permittee demonstrates that the cost of minimization would exceed the cost of repair. The permittee also will not be required to take measures to minimize subsidence damage if the surface owner denies the permittee access to the surface.

Paragraph (2) requires the operator to comply with all provisions of the approved subsidence control plan required under 880-X-81-.10.

Paragraph (3) concerns repair of damage. Paragraph (3)(a) requires the permittee to correct any material

damage to surface lands resulting from subsidence to the extent technologically and economically feasible. Paragraph (3)(b) requires the permittee to repair or compensate the owner for material damage resulting from subsidence to any non-commercial building or occupied residential dwelling or related structures. Paragraph (3)(c) requires the permittee, to the extent required under State law, to either repair or compensate for material damage resulting from subsidence caused to structures or facilities not protected under paragraph (3)(b). Paragraph (3)(d) provides a rebuttable presumption of causation by subsidence. If damage to non-commercial buildings or occupied residential dwellings and related structures occur as a result of earth movement within the area determined by projecting a specified angle of draw from underground mine workings to the surface, a rebuttable presumption exists that the permittee caused the damage. This presumption will normally apply to a 30-degree angle of draw. Alabama may approve application of the presumption to a site-specific angle of draw under specified conditions. If the permittee is denied access to the land or property for the purpose of conducting the pre-subsidence survey, no rebuttable presumption will exist. Paragraph (3)(e) covers provisions for adjustment of the performance bond amount because of subsidence-related damage. When subsidence-related damage occurs, Alabama must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs or decrease in value to land, structures or facilities or in the amount of the estimated cost to replace protected water supplies until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of occurrence of damage, no additional bond is required. This time may be extended under specified circumstances.

Paragraphs (4), (5), and (6) relate to restrictions placed on underground mining activities. Paragraph (4) provides that underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; or impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the use of, such features or facilities. Alabama may also limit the percentage

of coal extracted under or adjacent to these features or facilities.

Paragraph (5) provides that if subsidence causes material damage to any of the features or facilities covered by paragraph (4), Alabama may suspend mining under or adjacent to these features or facilities to ensure prevention of further material damage. This suspension would remain in place until the subsidence control plan is modified to ensure prevention of further material damage.

Paragraph (6) requires that if imminent danger is found to inhabitants, Alabama must suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams.

Paragraph (7) requires the operator to submit a detailed plan of the underground workings, including maps and descriptions of significant features of the underground mine. Upon request, information submitted with the detailed plan may be held as confidential under the requirements of 880-X-8K-.05(4).

#### 24. 880-X-10G-.03, Applicability

Alabama is adding a new paragraph (2) to specify that the requirements of this subchapter do not apply to disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator is required to minimize the area of prime farmland used for underground coal mine waste disposal. Existing paragraph (2) is redesignated as paragraph (3).

#### 25. 880-X-10G-.04, Soil Removal and Stockpiling

Alabama is amending paragraph (3)(b) by adding an exception to the requirement to separately remove the B or C horizon or other suitable soil materials. This exception applies where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained.

#### 26. 880-X-11B-.02, Inspections

Alabama is revising paragraph (8)(d)1. by removing the language "or permit revocation proceedings have been initiated and are being pursued diligently." Paragraph (8)(d)2. is being revised by replacing the reference to "Alabama Surface Mining Commission" with a reference to "Regulatory Authority."

Alabama is removing the existing language in paragraph (9) and adding the following new language:

(9) In lieu of the inspection frequency established in paragraphs (1) and (2) of this section, the Regulatory Authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(a) In selecting an alternate inspection frequency authorized under the paragraph above, the Regulatory Authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (9)(b) of this section. Following the inspection and public notice, the Regulatory Authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

1. How the site meets each of the criteria under the definition of an abandoned site under paragraph (8) of this section and thereby qualifies for a reduction in inspection frequency;

2. Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

3. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

4. The degree to which erosion and sediment control is present and functioning;

5. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

6. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

7. Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(b) The public notice and opportunity to comment required under paragraph (9)(a) of this section shall be provided as follows:

1. The Regulatory Authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

2. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the Regulatory Authority where written

comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

#### 27. 880-X-11D-.11, Request for Hearing

Alabama is revising paragraph (1) to allow the person charged with a violation to contest the proposed penalty or the fact of the violation within 30 days from the date of service of the conference officer's action.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

#### Written Comments

Written comments should specify, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on September 9, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.



**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. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

**IV. 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 subsection (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 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. 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 counterpart 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: August 14, 1998.

**Brent Wahlquist,**

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

[FR Doc. 98-22721 Filed 8-24-98; 8:45 am]

BILLING CODE 4310-05-M

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938**

[PA-122-FOR]

**Pennsylvania Regulatory Program**

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

**SUMMARY:** OSM is announcing the receipt of a proposed amendment to the Pennsylvania Regulatory Program (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended.

Pennsylvania has submitted both Act 54 and implementing regulations as part of the proposed amendment. This proposal modifies some requirements and adds other requirements to the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) dealing with mine subsidence control, subsidence damage repair or replacement, and water supply replacement. This amendment is intended to revise the State program to be consistent with SMCRA and the Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., E.D.T., September 24, 1998. If requested, a public hearing on the proposed amendment will be held on September 21, 1998. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T., on September 9, 1998.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Room 209 Executive House, 2nd and Chestnut Streets, P.O. Box 8461, Harrisburg, Pennsylvania 17105-8461, Telephone: (717) 787-5103

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Biggi, Director Harrisburg Field Office, Telephone: (717) 782-4036.

**SUPPLEMENTARY INFORMATION:****I. Background on the Pennsylvania Program**

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background on the Pennsylvania program, including the Secretary's findings and the disposition of comments can be found