

Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Griffiss Airfield, Rome, NY, was published in the **Federal Register** (63 FR 52999).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Rome, NY. The need for controlled airspace extending from 700 feet AGL at the Griffiss Airfield no longer exists. This area will be removed from the appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

#### PART 71—[AMENDED]

The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

##### AEA NY E5 Rome, NY [Removed]

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Issued in Jamaica, New York on November 24, 1998.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 98–32242 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

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

**SUMMARY:** OSM is approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to and additions of rules concerning definitions, petitions to initiate rulemaking, license applications, operation plans, reclamation plans, subsidence control, lands eligible for remining, 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. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** December 4, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.mcrgw.osmre.gov.

#### 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. 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 concerning the Alabama program at 30 CFR 901.15 and 901.16.

##### II. Submission of the Proposed Amendment

By letter dated August 4, 1998 (Administrative Record No. AL–0584), Alabama submitted an amendment to its program under 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 we sent to Alabama in accordance with 30 CFR 732.17(c) and at its own initiative.

We announced receipt of the amendment in the August 25, 1998, **Federal Register** (63 FR 45192). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 24, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified regulation reference errors at 880–X–2A–.06, definitions of material damage and occupied residential dwellings and structures related thereto, and at 880–X–8I–.10, subsidence control plans. We notified Alabama of these concerns by telephone on October 1, 1998, and by letter dated October 15, 1998 (Administrative Record No. AL–0587).

During our telephone conversation on October 1, 1998, Alabama indicated that it would not be able to address the regulation reference errors during the

current State rulemaking. Therefore, we are proceeding with this final rule Federal Register document.

### III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

### 1. Revisions to Alabama's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State regulation	Federal counterpart regulation
Definition of drinking, domestic or residential water supply.	880-X-2A-.06 .....	30 CFR 701.5.
Definition of lands eligible for remining	880-X-2A-.06 .....	30 CFR 701.5.
Definition of non-commercial building ...	880-X-2A-.06 .....	30 CFR 701.5.
Definition of previously mined area .....	880-X-2A-.06 .....	30 CFR 701.5.
Definition of program administrator .....	880-X-2A-.06 .....	30 CFR 795.3.
Definition of qualified laboratory .....	880-X-2A-.06 .....	30 CFR 795.3.
Definition of replacement of water supply.	880-X-2A-.06 .....	30 CFR 701.5.
Definition of unanticipated event or condition.	880-X-2A-.06 .....	30 CFR 701.5.
Surface Mining; Operations Plan: Permit Map(s).	880-X-8F-.08 (1)(e), (1)(l) and (1)(o) ..	30 CFR 779.24(e), 779.25 (a)(8) and (a)(9).
Surface Mining; Reclamation Plan: General Requirements.	880-X-8F-.09(2)(d) .....	30 CFR 780.18(b)(4).
Surface Mining; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	880-X-8F-.11 (1), (1)(b), (1)(c), (2), (3)(c) and (6).	30 CFR 780.25 (a), (a)(2), (a)(3), (b), (c)(3) and (f).
Surface Mining; Additional Cross Sections, Maps, and Plans.	880-X-8F-.20 .....	30 CFR 779.25(a) (1) through (4), (6) and (10).
Underground Mining; Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequence (PHC).	880-X-8H-.06(1)(e)3.(iv) .....	30 CFR 784.14(e)(3)(iv).
Underground Mining; Operations Plan: Permit Map(s).	880-X-8I-.07 (1)(e), (1)(l) and (1)(o) ...	30 CFR 783.24(e), 783.25 (a)(8) and (a)(9).
Underground Mining; Subsidence Control Plan.	880-X-8I-.10 (1), (2), (2)(b) and (2)(g)	30 CFR 784.20 (a), (b), (b)(2) and (b)(7).
Underground Mining; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	880-X-8I-.12 (1), (1)(b), (1)(c), (2), (3)(c) and (6).	30 CFR 784.16 (a), (a)(2), (a)(3), (b), (c)(3) and (f).
Underground Mining; Additional Cross Sections, Maps, and Plans.	880-X-8I-.20 .....	30 CFR 783.25.
Lands Eligible for Remining .....	880-X-8J-.13 .....	30 CFR 785.25.
Review of Permit Applications .....	880-X-8K-.10 (2)(d) and (3)(m) .....	30 CFR 773.15 (b)(4) and (c)(13).
Small Operator Assistance Program; Eligibility for Assistance.	880-X-8N-.07(c) .....	30 CFR 795.6(a)(2).
Small Operator Assistance Program; Data Requirements.	880-X-8N-.10 .....	30 CFR 795.9.
Small Operator Assistance Program; Applicant Liability.	880-X-8N-.13 (1), (1)(c), (1)(e), (1)(f) and (2).	30 CFR 795.12 (a), (a)(1), (a)(2), (a)(3) and (b).
Procedures for Seeking Release of Performance Bond.	880-X-9D-.02(1)(c) .....	30 CFR 800.40(a)(3).
Surface Mining; Hydrologic Balance: Siltation Structures.	880-X-10C-.17 (1)(c) and (3)(b) .....	30 CFR 701.5 and 816.46(c)(2).
Surface Mining; Impoundments .....	880-X-10C-.20 (1)(a), (1)(d), (1)(e), (1)(f)1., (1)(i)2.(i), (1)(i)2.(iii), (1)(l), (3)(b)1. and (3)(b)2.	30 CFR 816.49 (a)(1), (a)(4), (a)(5), (a)(6)(i), (a)(9)(ii)(a), (a)(9)(ii)(c), (a)(12), (c)(2)(i) and (c)(2)(ii).
Surface Mining; Coal Mine Waste: General Requirements.	880-X-10C-.38(1) .....	30 CFR 816.81(a).
Surface Mining; Backfilling and Grading: Thin Overburden.	880-X-10C-.54 .....	30 CFR 816.104.
Surface Mining; Backfilling and Grading: Thick Overburden.	880-X-10C-.55 .....	30 CFR 816.105.
Surface Mining; Revegetation: Standards for Success.	880-X-10C-.62(3) .....	30 CFR 816.116(c) (1) and (2).
Underground Mining; Hydrologic-Balance Protection.	880-X-10D-.12 (9) .....	30 CFR 817.41(j).
Underground Mining; Hydrologic Balance: Siltation Structures.	880-X-10D-.17 (1)(c) and (3)(b) .....	30 CFR 701.5 and 817.46(c)(2).

Topic	State regulation	Federal counterpart regulation
Underground Mining; Impoundments ....	880-X-10D-.20 (1)(a), (1)(d), (1)(e), (1)(f)1., (1)(i)2.(i), (1)(i)2.(iii), (1)(l), (3)(b)1. and (3)(b)2.	30 CFR 817.49 (a)(1), (a)(4), (a)(5), (a)(6)(i), (a)(9)(ii)(a), (a)(9)(ii)(c), (a)(12), (c)(2)(i) and (c)(2)(ii).
Underground Mining; Coal Mine Waste: General Requirements.	880-X-10D-.34(1) .....	30 CFR 817.81(a).
Underground Mining; Revegetation: Standards for Success.	880-X-10D-.56(3) .....	30 CFR 817.116(c) (1) and (2).
Underground Mining; Subsidence Control.	880-X-10D-.58 .....	30 CFR 817.121.
Prime Farmland; Applicability .....	880-X-10G-.03(2) .....	30 CFR 823.11(b).
Prime Farmland; Soil Removal and Stockpiling.	880-X-10G-.04(3)(b) .....	30 CFR 823.12(c)(2).
Inspections .....	880-X-11B-.02 (8)(d) and (9) .....	30 CFR 840.11 (g)(4) and (h).
Request for Hearing .....	880-X-11D-.11(1) .....	30 CFR 845.19(a).

Because the above revisions have the same meaning as the corresponding Federal regulations, we find that these regulations are no less effective than the Federal regulations.

## 2. 880-X-2A-.06 Definition of Material Damage

Alabama added a definition of material damage at 880-X-2A-.06. The definition found at 880-X-2A-.06 is the same as the Federal definition at 30 CFR 701.5. However, Alabama's definition refers to the term "material damage" as used in 880-X-8I-.20 and 880-X-10D-.58; and Alabama's regulation at 880-X-8I-.20 does not use this term. The definition should refer to 880-X-8I-.10 and 880-X-10D-.58, since these are the regulations that use the term "material damage." Alabama's regulations at 880-X-8I-.10 and 880-X-10D-.58 are also the counterparts to the Federal references of 30 CFR 784.20 and 30 CFR 817.121. As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Because the term "material damage" does not appear in 880-X-8I-.20, we find that this incorrect reference will have no effect on Alabama's program. Therefore, since Alabama's definition language is the same as the Federal definition language, we are approving the definition for use with Alabama's regulations at 880-X-8I-.10 and 880-X-10D-.58.

## 3. 880-X-2A-.06 Definition of Occupied Residential Dwelling and Structures Related Thereto

Alabama added a definition of occupied residential dwelling and structures related thereto at 880-X-2A-.06. Alabama's definition is the same as the Federal definition found at 30 CFR 701.5. However, Alabama's definition refers to the term "occupied residential dwelling and structures related thereto" as used at 880-X-8I-.20 and 880-X-10D-.58; and Alabama's regulation at

880-X-8I-.20 does not use this term. The definition should refer to 880-X-8I-.10 and 880-X-10D-.58, since these are the regulations that use the term "occupied residential dwelling and structures related thereto." Alabama's regulations at 880-X-8I-.10 and 880-X-10D-.58 are also the counterparts to the Federal references of 30 CFR 784.20 and 30 CFR 817.121. As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Because the term "occupied residential dwelling and structures related thereto" does not appear in 880-X-8I-.20, we find that this incorrect reference will have no effect on Alabama's program. Therefore, since Alabama's definition language is the same as the Federal definition language, we are approving the definition for use with Alabama's regulations at 880-X-8I-.10 and 880-X-10D-.58.

## 4. 880-X-2A-.06, 880-X-10C-.17(1)(a), and 880-X-10D-.17(1)(a) Definition of Siltation Structure

Alabama defines a siltation structure as a "sedimentation pond, a series of sedimentation ponds, or other treatment facility." Alabama removed this definition from its sections on surface coal mining and underground coal mining siltation structures at 880-X-10C-.17(1)(a) and 880-X-10D-.17(1)(a), and moved it to its definition section at 880-X-2A-.06.

Removing the definition of siltation structure from 880-X-10C-.17(1)(a) and 880-X-10D-.17(1)(a) and adding it to 880-X-2A-.06 is consistent with the changes made to the Federal regulations. We moved the counterpart Federal definition of siltation structure from the sections on surface coal mining and underground coal mining siltation structures at 30 CFR 816.46(a)(1) and 817.46(a)(1) and added it to the definition section at 30 CFR 701.5 on October 20, 1994 (59 FR 53022).

Therefore, we find that the relocation of the definition of siltation structure will not make Alabama's regulations less effective than the Federal regulations.

## 5. 880-X-2A-.08 Petitions To Initiate Rulemaking

This section allows citizens to submit to Alabama's State regulatory authority a petition for the issuance, amendment, or repeal of any regulation. If the regulatory authority determines that the petition has a reasonable basis, it must publish a notice in a newspaper of general circulation once a week for two consecutive weeks, asking for public comment on the proposed change. Within 60 days of the receipt of the petition to initiate rulemaking, the regulatory authority must either deny the petition in writing on the merits or initiate rulemaking proceedings.

We find that Alabama's revised provisions are consistent with the intent of the counterpart Federal regulation provisions at 30 CFR 700.12 concerning petitions to initiate rulemaking. The Federal provisions allow any person to petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. If the Director of OSM determines that the petition has a reasonable basis, a notice is published in the **Federal Register** asking for public comment on the proposed change. Within 90 days of the receipt of the petition, the Director of OSM must issue a written decision either granting or denying the petition. Therefore, Alabama's regulation is no less effective than the Federal regulation, and we are approving it.

## 6. 880-X-8I-.10(2)(h) Subsidence Control Plan

This section requires that a subsidence control plan include a description of the measures the permittee will take in accordance with 880-X-10D-.12(10) and 880-X-10D-.58(3) to replace adversely affected

protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. Alabama's requirement in this section is the same as the Federal requirements at 30 CFR 784.20(b)(8). However, the referenced regulation at 880-X-10D-.12(10) does not exist. Alabama's regulation should instead reference 880-X-10D-.12(9) and 880-X-10D-.58(3), which are counterparts to the Federal reference to 30 CFR 817.41(j) and 817.121(c). As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Therefore, we are approving 880-X-81-.10(2)(h) with the understanding that Alabama will interpret the reference to 880-X-10-.12(10) as 880-X-10-.12(9) until such time that Alabama can correct the reference.

#### IV. Summary and Disposition of Comments

##### Public Comments

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

##### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL-0585). We did not receive any comments.

##### Environmental Protection Agency (EPA)

Provisions found at 30 CFR 732.17(h)(11)(ii) require us to get the written consent of the EPA for those provisions of the program amendment that relate to air or water quality standards published 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, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL-0585). The EPA did not respond to our request.

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

Provisions found at 30 CFR 732.17(h)(4) require us to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 14, 1998, we requested comments on Alabama's amendment from the SHPO and ACHP

(Administrative Record No. AL-0585), but neither responded to our request.

#### V. Director's Decision

Based on the above findings, we approve the amendment, with additional requirements, as submitted by Alabama on August 4, 1998. We approve the rules that Alabama proposed with the provision that they be fully placed in force in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Alabama to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

##### Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change to an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Alabama program, we will recognize only the statutes, rules and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Alabama of only such provisions.

#### VI. Procedural Determinations

##### Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review 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 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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. Therefore, this rule will ensure that existing requirements previously published 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 determined and certifies under 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 13, 1998.

**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 submission date	Date of final publication	Citation/description
* August 4, 1998 .....	* December 4, 1998 .....	* 880-X-2A-.06; .08; 880-X-6A-.06(d)3; 880-X-8F-.08(1)(e), (l) and (o); .09(2)(d); .11(1), (1)(b) and (c), (2), (3)(c), (6); .20; 880-X-8H-.06(1)(e)3.(iv); 880-X-8I-.07(1)(e),(l) and (o); .10(1), (2), (2) (b), (g) and (h); .12(1), (1) (b) and (c), (2), (3)(c), (6); .20; 880-X-8J-.13; 880-X-8K-.10(2)(d), (3)(m); 880-X-8N-.07(c); .10; .13(1), (1) (c), (e) and (f), (2); 880X-9D-.02(1)(c); 880-X-10C-.17(1) (a) and (c), (3)(b); .20(1)(a), (d), (e), (f)1., (i)2. (i) and (iii), (l), (3)(b)1. and 2.; .38(1); .54; .55; .62(3); 880-X-10D-.12(9); .17(1) (a) and (c), (3)(b); .20(1) (a), (d), (e), (f)1., (i)2. (i) and (iii), (l), (3)(b)1. and 2.; .34(1); .56(3); .58; 880-X-10G-.03(2); .04(3)(b); 880-X-11B-.02 (8)(d), (9); 880-X-11D-.11(1).

[FR Doc. 98-32350 Filed 12-3-98; 8:45 am]

BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 935**

[OH-243-FOR, #76]

**Ohio 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 Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to its rules pertaining to permitting requirements, bond release, and performance standards to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** December 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Manager, Pittsburgh Oversight and Inspection Office, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2153. Internet: grieger@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Ohio 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 Ohio Program**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34668). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Submission of the Proposed Amendment**

By letter dated December 30, 1997 (Administrative Record No. OH-2174-05), Ohio submitted a proposed amendment to its program in accordance with SMCRA and 30 CFR 732.17(c). Ohio proposes to revise the Ohio Administrative Code (OAC) at sections:

- 1501.13-4-05—Permit Application Requirements
- 1501.13-4-12—Special Categories of Mining
- 1501.13-4-14—Underground Permit Application Requirements
- 1501.13-7-05—Release of Performance Bond
- 1601.13-9-04—Performance Standards

We announced receipt of the proposed amendment in the January 23, 1998, **Federal Register** (63 FR 3507), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 23, 1998.

During our review of the amendment, we identified concerns with Ohio's rules at OAC 1501 at subsections 13-4-12, 13-4-05, 13-4-14, and 13-9-04. We notified Ohio of our concerns via electronic mail on May 5, 1998 (Administrative Record No. OH-2174-

11). By letter dated June 2, 1998 (Administrative Record No. OH-2174-12), Ohio submitted revisions at OAC 1501 at subsections:

- 13-4-05 (H)(1)(c), (H)(2)(c), (H)(6)
- 13-4-14 (H)(1)(c), (H)(2)(c), (H)(6)
- 13-9-04 (H)(1)(c)(ii), (H)(1)(d)

to reference the criteria in Natural Resources Conservation Service's Technical Release No. 60 (TR 60), "Earth Dams and Reservoirs," relating to the provisions of 1513.13(E) (1) and (2).

During a conference call on July 16, 1998 (Administrative Record No. OH-2174-13), we informed Ohio that one issue remained at OAC 1501:13-4-12. On September 4, 1998, Ohio telefaxed us revisions to subsection 13-4-12(F) (Administrative Record No. OH-2174-16).

Based on these revisions, we reopened the public comment period in the October 6, 1998, **Federal Register** (63 FR 53618). The comment period closed on October 21, 1998.

**III. Director's Findings**

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

**A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations**

The proposed State regulations listed in the table below contain language that is the same or similar to the