

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 740, 745, 761, and 772**

RIN 1029-AB42 and 1029-AB82

**Rulemaking and Environmental Impact Statement; Valid Existing Rights and Prohibitions of Section 522(e); Public Hearings****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Notice of public hearings.

**SUMMARY:** On January 31, 1997, the Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) published proposed rules which would implement and interpret section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM has received several requests to hold public hearings on the proposed rule and the supporting environmental impact statement and economic analysis and is announcing that public hearings will be held.

**DATES:** Public hearings are scheduled for: May 15, 1997, in Athens, Ohio at 7:00 p.m.; May 20, 1997, in Whitesburg, Kentucky at 7:00 p.m.; May 20, 1997 in Washington, Pennsylvania at 6:00 p.m.; and May 21, 1997, in Billings, Montana at 7:00 p.m.

**ADDRESSES:** The public hearings will be held in: Athens, Ohio at the Ohio University Inn, 331 Richland Avenue, Athens, Ohio 45701; Whitesburg, Kentucky at the Appalshop, 306 Madison Street, Whitesburg, KY 41585; Washington, Pennsylvania at the Ramada Inn, 1170 Chestnut Street, Washington, PA 15301; and Billings, Montana at the Sheraton Billings, 27 North 27th Street, Billings, Montana 59101.

**FOR FURTHER INFORMATION CONTACT:** Andy DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone (202) 208-2701; E-Mail: adevito@osmre.gov.

**SUPPLEMENTARY INFORMATION:** On January 31, 1997 (62 FR 4836-72) OSM published two proposed rules dealing with the interpretation and implementation of section 522(e) of SMCRA. The first rule, RIN 1029-AB42, would amend OSM's regulations to redefine the circumstances under which a person has valid existing rights (VER) to conduct surface coal mining

operations in areas where such operations are otherwise prohibited by section 522(e) of SMCRA. The second rule RIN 1029-AB82, is a proposed interpretative rulemaking to address the question of whether subsidence due to underground mining is a surface coal mining operation and thus prohibited in areas enumerated in section 522(e) of SMCRA. On January 31, 1997 (62 FR 4759), OSM also made available for public comment an Environmental Impact Statement analyzing the impact of the two proposed rules and the alternatives under consideration.

OSM has received requests to hold public hearings on the proposed rule and supporting documentation. As a result, OSM has scheduled four public hearings on the proposed rules. Refer to **DATES** and **ADDRESSES** for the times, dates and locations for each hearing. The hearings will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony, if possible.

Dated: April 22, 1997.

**Gene E. Krueger,**

*Acting Assistant Director, Program Support.*

[FR Doc. 97-10771 Filed 4-24-97; 8:45 am]

**BILLING CODE 4310-05-M**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 901**

[SPATS No. AL-067-FOR]

**Alabama Regulatory Program**

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

**ACTION:** 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 proposed amendment consists of revisions to the Alabama Surface Mining Commission Rules pertaining to hearing orders and decisions, license application requirements, procedures for permit application review, determination of bond forfeiture amount, surface and ground water monitoring, disposal of excess spoil, and coal mine waste. The amendment is intended to revise the

Alabama program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

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., May 27, 1997. If requested, a public hearing on the proposed amendment will be held on May 20, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on May 12, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Andrew R. Gilmore, Acting 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.

Andrew R. Gilmore, Acting Director,  
Birmingham Field Office, Office of  
Surface Mining Reclamation and  
Enforcement, 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:**  
Andrew R. Gilmore, Acting Director,  
Birmingham Field Office, Telephone:  
(205) 290-7282.

**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 March 28, 1997 (Administrative Record No. AL-0562), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the proposed amendment at its own initiative. Alabama proposes to amend 11 sections of the Alabama Surface Mining Commission 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 brief discussion of the proposed amendment is presented below.

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

Alabama is proposing to replace the existing requirements for hearing orders and decisions with the following new requirements. At paragraph (1)(a), the hearing officer is to make a written decision within 60 days after the close of any hearing. At paragraph (1)(b), the Division of Hearings and Appeals (DHA) is to provide copies of all orders of the hearing officer to all parties, other than the regulatory authority, by first class mail. At paragraph (2), any party may petition the Commission for an expedited review of any pending appeal if the hearing officer fails to render a decision within the time specified in paragraph (1)(a).

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

At paragraph (k), the reference to "Chapter 880-X-7" is corrected to read "Chapter 880-X-8."

### 3. Rule 880-X-7B-.07 Procedures for Permit Application Review

In the first sentence of paragraph (5), the word "signator" is corrected to read "signatory."

### 4. Rule 880-X-9E-.05 Determination of Forfeiture Amount

At paragraph (2), the word "principle" is corrected to read "principal" and minor language changes are made to clarify the existing requirement. At paragraph (3), minor language changes were made to clarify the existing requirement.

### 5. Rule 880-X-10C-.23 Hydrologic Balance: Surface and Ground Water Monitoring

At paragraph (2)(a), the reference to "Rule 880-X-8E-.06(7)" is corrected to read "Rule 880-X-8E-.06(1)(j)."

### 6. Rule 880-X-10C-.36 Disposal of Excess Spoil (Surface Mining Activities)

At paragraph (13)(b), the word "fields" is corrected to read "fills." At paragraph (13)(b)1., the reference to "Rule 880-X-10C-.41" is corrected to read "Rule 880-X-10C-.40." In the first sentence of paragraph (16)(a), the language "in natural ground along the periphery of the fill" is removed.

### 7. Rule 880-X-10C-.38 Coal Mine Waste: General Requirements (Surface Mining Activities)

At Rule 880-X-10C-.38, existing paragraph (1)(d) is removed and existing paragraphs (1)(e) and (1)(f) are redesignated paragraphs (1)(d) and (1)(e), respectively.

### 8. Rule 880-X-10-.40 Coal Mine Waste: Refuse Piles (Surface Mining Activities)

At paragraph (3)(a), Alabama is proposing an exception to the requirement to spread coal mine waste in layers no thicker than 24 inches. If engineering data substantiates a minimum safety factor of 1.5 for the refuse pile, the State regulatory authority may approve layers exceeding 24 inches in thickness.

### 9. Rule 880-X-10D-.33 Disposal of Excess Spoil and Underground Development Waste (Underground Mining Activities)

At paragraph (13)(b), the word "fields" is corrected to read "fills." At paragraph (13)(b)1., the reference to "Rule 880-X-10D-.37" is corrected to read "Rule 880-X-10D-.36." In the first sentence of paragraph (16)(a), the language "in natural ground along the periphery of the fill" is removed.

### 10. Rule 880-X-10D-.34 Coal Mine Waste: General Requirements (Underground Mining Activities)

At Rule 880-X-10D-.34, existing paragraph (1)(d) is removed and existing paragraphs (1)(e) and (1)(f) are redesignated paragraphs (1)(d) and (1)(e), respectively.

### 11. Rule 880-X-10D-.36 Coal Mine Waste: Refuse Piles (Underground Mining Activities)

At paragraph (3)(a), Alabama is proposing an exception to the requirement to spread coal mine waste in layers no thicker than 24 inches. If engineering data substantiates a minimum safety factor of 1.5 for the refuse pile, the State regulatory authority may approve layers exceeding 24 inches in thickness.

## 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 be specific, 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 May 12, 1997. 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 subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *National Environmental Policy Act*

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

##### *Paperwork Reduction Act*

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

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon 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*

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: April 18, 1997.

##### **Deborah Watford,**

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

[FR Doc. 97-10772 Filed 4-24-97; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 251

RIN 0596-AB57

#### Land Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Forest Service proposes regulations to establish the procedures by which certain persons may conduct revenue-producing visitor services in Conservation System Units within the National Forests in Alaska. These regulations are required by section 1307 of the Alaska National Interest Lands Conservation Act. The intended effect is to establish workable procedures for recognizing and administering the statutory rights and preferences for conducting visitor services.

**DATES:** Comments must be received in writing by June 24, 1997.

**ADDRESSES:** Send written comments to Regional Forester, Alaska Region, Forest Service, USDA, PO Box 21628, Juneau, AK 99802-1628.

The public may inspect comments received on this proposed rule at the Alaska Regional Office, Room 519A, Federal Building, 709 W. 9th Street, Juneau, AK 99802, Monday through Friday between the hours of 8 a.m. to noon and 12:30 p.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Arn Albrecht, Public Services Staff, Alaska Region, (907) 586-7886.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Forest Service manages National Forest System lands in Alaska consisting of the Tongass and the Chugach National Forests in southeast and southcentral areas of the State. A number of laws govern the issuance and administration of special use authorizations that authorize a variety of visitor services operated by private concessionaires, ranging from outfitting and guiding to resorts. These laws include the Organic Organization Act of June 4, 1897; the Term Permit Act of March 4, 1915; the Granger-Thye Act of April 24, 1950; the Land and Water Conservation Fund Act of September 3, 1964; the Wilderness Act of September 3, 1964, the Alaska National Interest Lands Conservation Act of 1980; and the National Ski Area Permit Act of 1986. Regulations at 36 CFR part 251, subpart B address the special-use application process; the nature of interest of an authorization; terms and conditions of use; rental fees; issuance; termination; revocation; suspension; and renewal. These regulations must be augmented to implement the special statutory requirements specific to Conservation System Units within the National Forests in Alaska.

##### **Statutory Requirements**

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) provided for the disposition and use of a variety of federally owned lands in Alaska. Section 1307 (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to revenue producing "visitor services" on certain lands within the National Forest System designated by ANILCA as Conservation System Units under the administration of the Secretary of Agriculture.

A Conservation System Unit, as it relates to the National Forests, means any unit in Alaska of the National Wild and Scenic River System, National Trail System, National Wilderness Preservation System or a National Forest Monument including existing Units or any such Unit established, designated, or expanded hereafter. (ANILCA section 102(4)) (43 U.S.C. 1618)

Subsection (a) of section 1307 (16 U.S.C. 3197) provides that, notwithstanding any other provision of law, the Secretary of Agriculture, under