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*Manager, Air Traffic Division, Eastern Region.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 901

[SPATS No. AL-067-FOR]

#### Alabama Regulatory Program

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

**ACTION:** Proposed Rule; Reopening and Extension of Public Comment Period on Proposed Amendment.

**SUMMARY:** OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Alabama regulatory program (hereinafter referred to as the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Alabama's proposed rules pertain to Rule 880-X-5A-.22, Orders and Decisions; and Rules 880-X-10C-.40 and 880-X-10D-.36, Coal Mine Waste: Refuse Piles (Surface Mining Activities and Underground Mining Activities, respectively). The amendment is intended to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

**DATES:** Written comments must be received by 4:00 p.m., c.d.t., November 3, 1997.

**ADDRESSES:** Written comments 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, 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, Telephone: (205) 290-7282.

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

Jasper, Alabama 35502-2390, Telephone (205) 221-4130.

**FOR FURTHER INFORMATION CONTACT:**

Arthur W. Abbs, Director, Birmingham Field Office, Telephone: (205) 290-7282.

**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. Discussion 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. The provisions of the Alabama Surface Mining Commission Rules that Alabama proposes to amend are: Rule 88-X-5A-.22, Orders and Decisions; Rule 880-X6A-.06, License Application Requirements; Rule 880-X-7B-.07, Procedures for Permit Application Review; Rule 880-X-9E-.05, Determination of Forfeiture Amount; Rule 880-X-10C-.23, Hydrologic Balance: Surface and Ground Water Monitoring; Rule 880-X-10C-.36, Disposal of Excess Spoil (Surface Mining Activities); Rule 880-X-10C-.38, Coal Mine Waste: General Requirements (Surface Mining Activities); Rule 880-X-10C-.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities); Rule 880-X-10D-.33, Disposal of Excess Spoil and Underground Development Waste (Underground Mining Activities); Rule 880-X-10D-.34, Coal Mine Waste: General Requirements (Underground Mining Activities); and Rule 880-X-10D-.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities).

OSM announced receipt of the proposed amendment in the April 25, 1997, **Federal Register** (62 FR 20138) and invited public comment on its adequacy. The public comment period ended May 27, 1997.

During its review of the amendment, OSM identified concerns relating to Rule 880-X-5A-.22, Orders and Decisions; Rule 880-X-10C-.40, Coal Mine Waste: Refuse Piles (Surface

Mining Activities); and Rule 880-X-10D-.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities). On June 16, 1997, OSM notified Alabama of the concerns by telephone and by fax (Administrative Record No. AL-0572). Alabama responded in a letter dated July 30, 1997, (Administrative Record No. AL-0572) by submitting a revision to the amendment and additional explanatory information.

Alabama proposes revisions to Rule 880-X-5A-.22, Orders and Decisions; Rule 880-X-10C-.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities); and Rule 880-X-10D-.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities).

Specifically, Alabama proposes at Rule 880-X-5A-.22, Orders and Decisions, to change from 60 days to 30 days the time in which the hearing officer must make a written decision after the close of any hearing. For Rule 880-X-10C-.40, Coal Mine Waste: Refuse Piles (Surface Mining Activities) and Rule 880-X-10D-.36, Coal Mine Waste: Refuse Piles (Underground Mining Activities), Alabama proposes to issue a policy statement clarifying that the phrase "safety factor" means "static safety factor."

#### III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alabama program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. 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.

#### IV. Procedural Determinations

##### *Executive Order 12866*

This proposed 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

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: October 9, 1997.

**Charles E. Sandberg,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX27-1-5945; FRL-5910-2]

### Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Texas Clean Fuel Fleet Program Revision to the State Implementation Plan

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

**ACTION:** Proposed disapproval.

**SUMMARY:** The EPA is proposing disapproval of the Texas Clean Fuel Fleet (CFF) SIP revision submitted on August 9, 1996, by the State of Texas for the purpose of establishing a substitute CFF program. The EPA is disapproving the State's SIP revision due to changes in the State law that altered the current SIP revision submittal and because, in EPA's opinion, the State did not make a convincing and compelling equivalency determination with the Federal CFF program.

**DATES:** Comments must be received on or before November 17, 1997.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-

L), 1445 Ross Avenue, Suite 700, Dallas, Texas, 78711-3087. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711-3087.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scoggins, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, all comments must be submitted in writing to the EPA Region 6 address above.

### SUPPLEMENTARY INFORMATION:

#### I. Background

On November 15, 1990, Congress enacted amendments to the 1997 Clean Air Act (the Act); Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The CFF program is contained under part C, entitled, "Clean Fuel Vehicles," of Title II of the Act, as amended November 15, 1990. Part C was added to the Act to establish two programs: a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program) and the Federal CFF program in certain ozone and carbon monoxide nonattainment areas.

Section 182(c)(4) of the Act, 42 U.S.C. 7511a (c)(4), allows states to opt-out of the Federal CFF program by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone producing and toxic air emissions as the Federal CFF program. The EPA may approve such a revision only if it consists exclusively of provisions other than those required under this Act for the area.

The State of Texas chose to opt-out of the Federal CFF program in a committal SIP revision submitted to EPA on November 15, 1992. In July 1994, Texas submitted the State's opt-out program in a SIP revision to EPA and adopted rules to implement the Texas CFF Program. The Texas CFF SIP was revised based upon changes to State law and resubmitted to EPA on August 6, 1996. On June 20, 1997, the Governor of Texas signed into law Senate Bill 681 that modified the supporting legislation (Chapter 382 of the Texas Health and Safety Code) for the current submitted revision.

#### II. EPA Analysis of State Submittal

The EPA is proposing disapproval based on the finding that changes to the supporting legislation have altered the August 6, 1996, submitted SIP revision.