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4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL-079-FOR; Docket ID: OSMRE-2016-0005; S1D1S SS08011000 SX064A000 178S180110; S2D2S SS08011000 SX064A000 17XS501520]

Alabama Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its Program to closely follow the Federal regulations regarding awarding of appropriate costs and expenses including attorneys' fees. Alabama is revising its program to be no less effective than the Federal regulations.

DATES: Effective Date: [Insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Alabama Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its

borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, Federal Register (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10 and 901.15.

II. Submission of the Amendment

By letter dated March 18, 2016 (Administrative Record No. AL-0669), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.) at its own initiative.

We announced receipt of the proposed amendment in the May 20, 2016, Federal Register (81 FR 31881). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 20, 2016. We received one public comment (Administrative Record No. AL-0669-04) that is addressed in the “Public Comments”

section of part **IV. Summary and Disposition of Comments.**

III. OSMRE's Findings

We are approving the amendment as described below. The following are the findings we made concerning Alabama's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov.

1. Alabama Code 880-X-5A-.35—Assessment of Costs

Alabama revised this section to allow any party the opportunity to be awarded costs and expenses by a final appellate body. Additionally, language was added to protect the public by including a "bad faith" clause so that expenses may only be assessed against any person in favor of the permittee or the regulatory authority upon demonstration that the person initiated or participated in the proceedings in bad faith for the purpose of harassing or embarrassing the permittee or the regulatory authority.

We find that Alabama's revision regarding awarding of expenses protects the public in a manner that is no less effective than the counterpart Federal regulations at 43 CFR 4.1294. Therefore, we are approving Alabama's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received one (Administrative Record No. AL-0669-04), which is discussed below.

A comment was received supporting the approval of the proposed amendment in order to bring the Alabama program into compliance with SMCRA and correcting deficiencies in Alabama's program which created hardship for citizens, citizen-based groups, and others, by putting them at risk of potentially having to pay substantial fees if they challenged a permit or other decision covered by Alabama's regulations.

We agree with this comment and are approving the amendment.

Federal Agency Comments

On April 7, 2016, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we

requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL-0669-03). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 ask EPA to concur on the amendment. However, on April 7, 2016, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL-0669-03). The EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 7, 2016, we requested comments on Alabama's amendment (Administrative Record No. AL-0669-03), but neither the SHPO nor ACHP responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve the amendment Alabama sent us on March 18, 2016 (Administrative Record No. AL-0669).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 901, that codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

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

Executive Order 12866 - Regulatory Planning and Review

This rulemaking is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rulemaking 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 because each program is drafted and promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132 - Federalism

This rulemaking does not have Federalism implications. SMCRA delineates the roles of

the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rulemaking on Federally-recognized Indian tribes and have determined that the rulemaking does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to

prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rulemaking is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rulemaking does not require an environmental impact statement because 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 rulemaking 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 certifies that this rulemaking 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 rulemaking, 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. In making the determination as to whether this rulemaking would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rulemaking.

Unfunded Mandates

This rulemaking will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rulemaking, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 2016.

Sterling Rideout, Acting Regional Director,

Mid-Continent Region.

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 an 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
* * * * * March 18, 2016	* * [Insert date of publication in the Federal Register]	Alabama Code 880-X-5A-.35

Editorial note: This document was received for publication by the Office of the Federal

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