

APA-1
07/04

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 880 Department or Agency: Alabama Surface Mining
Commission

Rule No: 880-X-10D-.56

Rule Title: Revegetation: Standards for Success

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm
or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police
power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation
available that could adequately protect the public? No

Does the proposed rule have the effect of directly or
indirectly increasing the costs of any goods or services
involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public
than the harm that might result from the absence of the
proposed rule? No


Are all facets of the rulemaking process designed solely
for the purpose of, and so they have, as their primary effect,
the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be
accompanied by a fiscal note prepared in accordance with subsection (f) of Section
41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer:  _____

Date: 3/22/2012 _____

(DATE FILED)
(STAMP)

APA-2
11/96

ALABAMA SURFACE MINING COMMISSION

NOTICE OF INTENDED ACTION

AGENCY NAME: Surface Mining Commission

RULE NO. & TITLE:

880-X-10D-.56 Revegetation: Standards for Success

INTENDED ACTION: The Alabama Surface Mining Commission proposes to amend the above-listed rule.

SUBSTANCE OF PROPOSED ACTION: The proposed rule amendment will change the standards for vegetation success for reclaimed mine lands which will be planted with trees or shrubs. The current rule requires an herbaceous ground cover of at least 80% on such areas for some post-mining land uses. Research and experience has shown that herbaceous ground cover of this density inhibits the growth of shrubs and trees and results in poor survival rates. The proposed rule will change this standard to require that herbaceous ground cover be sufficient to control erosion without setting a numeric standard.

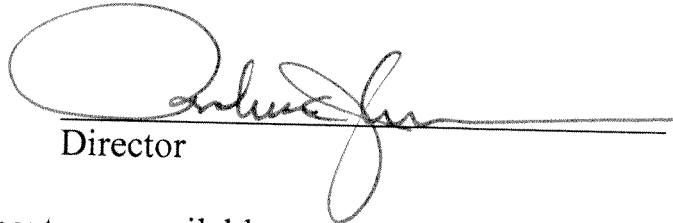
TIME, PLACE, MANNER OF PRESENTING VIEWS:

Persons wishing to submit comments or suggestions concerning this rulemaking may do so in writing. If requested by one or more persons, a public hearing will be held on June 5, 2012 at 10:00 A.M. in the ASMC Hearing Room, Third Floor, 1811 Second Avenue (Pinnacle Bank Building), Jasper, Alabama. Written comments must be submitted no later than 5:00 p.m. on June 5, 2012, to:

Alabama Surface Mining Commission
Randall C. Johnson, Director
P. O. Box 2390
Jasper, Alabama 35502-2390

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
June 5, 2012

CONTACT PERSON AT AGENCY: Randall C. Johnson, Director



Director

Copies of proposed amendments are available at our website:

<http://surface-mining.alabama.gov/rulemakingnotice.htm>

Copies of the proposed regulations are also available (either hard copy or on disc) at the Alabama Surface Mining Commission, 1811 Second Avenue, Second Floor, Pinnacle Bank Building, Jasper, Alabama.

APA-6
11/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No: 880

Department or Agency: Alabama Surface Mining Commission

Rule No: 880-X-10D-.56

Rule Title: Revegetation: Standards for Success

 New X Amend Repeal Adopt by
Reference

 X This rule has no economic impact.

 This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED.
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

880-X-10D-.56 Revegetation: Standards For Success.

(1) Success of Revegetation shall be judged on the effectiveness of the vegetation for the approved post-mining landuse, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 880-X-10D-.52.

(a) The permittee shall have the burden of demonstrating that revegetation has succeeded in meeting the standards of this subchapter. For any application for Phase III bond release, the permittee shall submit data demonstrating that the revegetation has met the standards for success contained in this Rule. Sampling techniques used shall conform to the outline in the ASMC Technical Manual #1, "Statistical Analysis and Sampling Techniques for Determining Revegetation Success on Surface Mined Lands in Alabama". Revegetation shall be deemed successful if it is demonstrated to equal the approved success standard, using a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) At a minimum, vegetation parameters identified in Paragraph (2) for grazing land, pasture land, or crop land, shall equal or exceed the required success standards during the growing seasons of any two years of the responsibility period except the first. Vegetation parameters for other landuses shall equal or exceed the applicable success standards during the growing seasons of the final year of the liability periods.

(c) Herbaceous ground cover shall not be less than that required to support the approved postmining landuse.

(d) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for three years. The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last two growing seasons of the responsibility period and, if any replanting of woody

plants took place during the responsibility period, the total number planted during the last 3 years of that period is less than 20 percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens two years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

(2) Standards for success are as follows:

(a) For areas reclaimed to an approved post mining landuse of grazing or pasture land, ground cover shall equal or exceed 80% of the affected soil surface area. Production shall equal or exceed 90% of the average yields on the nearby unmined lands as established by the Alabama Agricultural Experiment Station and its entities or the U. S. Department of Agriculture Soil Conservation Service in the Field Office Technical Guide for the county in which the surface mining operation is located.

(b) For areas on which the approved post-mining landuse is cropland, production shall equal or exceed 90% of the average yields for unmined lands of the same soil type as established by the Alabama Agricultural Experiment Station and its entities or the United States Department of Agriculture Soil Conservation Service in the Field Office Technical Guide for the county in which the surface mining operation is located.

(c) For areas on which the approved post-mining landuse is forest land, successful vegetation shall be determined on the basis of tree stocking and ground cover. Stocking shall equal or exceed 450 countable trees per acre. A countable tree shall be:

(i) Of the species approved in the reclamation plan; and

(ii) Be healthy;

(iii) Have utility for the approved postmining landuse, and

~~(iv) At least 80% of the trees counted shall have been in place for at least three years.~~

Ground cover shall equal or exceed 70%, except that, on a case-by-case basis, ASMC may approve a lower ground cover standard in the permit review process upon a demonstration by the applicant that 70% ground cover would cause excessive competition for the tree species used and that alternative erosion control measures will be used which give equal or better results. Firebreaks may be exempted from revegetation requirements if approved by ASMC.

(d) For areas to be developed for industrial, commercial or residential post-mining landuses less than two years after regrading is completed, vegetative ground cover shall not be less than that required to control erosion.

(e) For areas developed for post-mining landuse of recreation or wildlife habitat, vegetation success shall be judged on the basis of ground cover and stocking rates as specified in the ~~and the terms of the approved~~ reclamation plan approved in the permit application process. To avoid competition, herbaceous ground cover on areas planted with woody vegetation or planted to food plots shall be limited to that necessary to adequately control erosion. Ground cover shall equal or exceed 80% except on areas designated as food plots; provided such food plots shall not be moreless than 1/4 acre in size nor exceed 20% of the total disturbed area and shall be located in areas which are least susceptible to erosion. Herbaceous ground cover on areas not planted with woody vegetation or as food plots shall equal or exceed 80%. The reclamation plan shall specify species, planting arrangements, stocking, locations and success standards applicable to the postmining landuse and shall be reviewed and approved by the Alabama Surface Mining Commission in consultation with the Alabama Department of Conservation and Natural Resources.

(f) For areas previously disturbed by mining that were not reclaimed to the requirements of this section and that are remined or otherwise redisturbed by surface coal mining operations, at a minimum, the vegetative ground cover shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(g) For areas to be returned to a postmine, landuse of undeveloped ~~useland~~, stocking rates of woody plants shall

be specified in the approved reclamation plan in consultation with the Alabama Forestry Commission. Success of herbaceous vegetation shall not be less than that required to control erosion and attain a ground cover that equals or exceeds 80% of the affected soil surface area except in areas where woody vegetation is stocked. In areas where woody vegetation is stocked, herbaceous groundcover should be limited to that necessary to control erosion and support the land use. Seed mixes and seeding rates shall be specified in the approved reclamation plan.

(3) (a) The period of extended responsibility for successful revegetation shall be for five (5) full years, except as provided in paragraph (3) (b) of this section, and shall begin after the last year of augmented seeding, fertilizing, irrigation or other work.

(b) Two full years for lands eligible for remaining 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.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §9-16-91.

History: Original filed November 14, 1989. **Amended:** September 18, 1990. **Amended:** September 12, 1991; effective June 10, 1992. **Amended:** Filed July 27, 1998; effective August 31, 1998; operative January 3, 1999.

Ed. Note: On December 4, 1998, the Office of Surface Mining approved this rulemaking adopted by the commission on July 16, 1998. The effective date of this rule will be January 3, 1999.