

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management  
Rule No. 335-8-1-.09  
Rule Title: Review Process for Federally Regulated Activities

         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

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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.

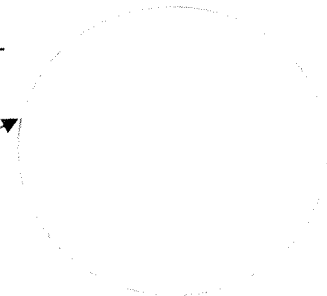
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Certification of Authorized Official

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 *Michael Elliott*

Date November 18, 2011

Date Filed



APA-2  
11/96

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
FIELD OPERATIONS DIVISION**

**NOTICE OF INTENDED ACTION**

AGENCY NAME: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULE NO. & TITLE: 335-8-1-.09 Review Process for Federally Regulated Activities  
335-8-1-.10 Review Process for Federal Projects, Activities  
and Assistance

INTENDED ACTION: Revise Division 8 of the ADEM Administrative Code to be consistent with Federal Rules.

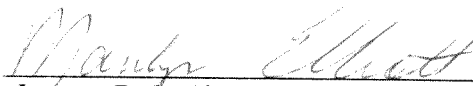
SUBSTANCE OR PROPOSED ACTION: Revisions to the Division 8 Code are being proposed to make a Routine Program Change and regulation changes to be consistent with Federal Rules.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held January 4, 2012 at 10:00 a.m. in the Main Hearing Room at the ADEM Central Office located at 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: January 6, 2012

CONTACT PERSON AT AGENCY: Mike Sherman (334) 394-4316

  
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Lance R. LeFleur  
Director

**335-8-1-.09 Review Process for Federally Regulated Activities.**

(1) Pursuant to 15 CFR Part 930, Subpart D, uses which are federally licensed or permitted activities affecting the coastal area are required to be conducted in a manner consistent with the management program. The Department shall review and respond to a federal license or permit applicant's consistency certification in accordance with the provisions of 15 CFR Part 930, Subpart D.

(a) The federal license and permit activities which are subject to review, listed pursuant to 15 CFR Part 930, Subpart D, are:

<b>Agency</b>	<b>Licenses and Permits</b>	<b>Citation</b>
Department of Defense	Permits required under section 10 and 11 of the River and Harbor Act of 1899.	33 U.S.C. §§ 403 and 404
	Permits required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.	33 U.S.C. §§ 1413
	Permits required under Section 404 of the Federal Water Pollution Control Act of 1972, as amended.	33 U.S.C. §§ 1344
Environmental Protection Agency	Permits and licenses required under Sections 401, 402, 403, 404 and 405 of the Federal Water Pollution Control Act of 1972, as amended.	33 U.S.C. §§ 1341-1345
	Permits and applications for redesignation of land areas under regulation for the prevention of significant deterioration of air quality.	42 U.S.C. §§ 7474 and 7475
	Permits required under the Marine Protection, Research and Sanctuaries Act of 1972.	33 U.S.C. §§ 1412
	All other permits for water pollution control.	
	All other permits for air	

Agency	Licenses and Permits	Citation
Department of Transportation	pollution control.	
	All permits for solid waste control.	
	Permits for construction and modification of bridges and causeways in navigable waters.	33 U.S.C. §§ 401
Nuclear Regulatory Commission	Permits for transporting hazardous substances and materials.	
	Licenses for deep-water ports.	15 C.F.R. §§ 158, <u>et seq.</u>
Federal Energy Regulatory and 808 Commission	Permits and licenses required for siting and construction of nuclear power plants.	
	Licenses required for non-federal hydro-electric projects and associated transmission lines under Sections 4(e) and 15 of the Federal Power Act.	16 U.S.C. § 797(e)
	Orders for interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act.	16 U.S.C. § 824a(b)
	Certificates required for the construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act.	15 U.S.C. § 717f(c)
Department of the Interior	Permission and approval required for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act.	15 U.S.C. § 717f(b)
	Permits and licenses required for all offshore activities related to mining and oil and	33 U.S.C. §§ 181, <u>et seq.</u>

<b>Agency</b>	<b>Licenses and Permits</b>	<b>Citation</b>
	gas operations.	
	Permits for the taking of an endangered species	Endangered Species Act 16 U.S.C. §§ 1531-1543
	Permits and licenses required for geothermal operations.	Geothermal Steam Act of 1970.
Department of Agriculture	Permits for water easements and timbering activities on National U.S. Forest Service land.	43 U.S.C. § 1716.
	Permits and licenses for use and occupancy of lands for hotels, resorts, summer homes, stores and facilities for industrial, commercial, educational or public use.	16 U.S.C. § 497
Department of Energy	Permits for the construction, operation, siting of energy facilities.	
Department of Commerce	Permits for research involving taking endangered species or marine mammals or for taking of marine mammals for public; display or incidental to commercial fishing.	Endangered Species Act of 1973; 16 U.S.C. §§ 1531-1543 Marine Mammal Protection Act 16 U.S.C. §§ 1361-1407.

(b) In addition to the data and information required to be furnished to the Department with the consistency certification pursuant to 15 C.F.R. §§ 930.58, the following data and information must be provided:

1. An informational copy of the application for the license or permit;
2. A copy of the federal agency's written determination that the license or permit application is complete;
3. A copy of the federal agency's draft or proposed license or permit if a draft or proposed license or permit is required to be prepared by federal law or regulations;
4. A copy of any transcript of any public hearing conducted by the federal agency concerning the federal license or permit application and all written comments received by the federal agency during any comment period; and,

5. A copy of any Environmental Assessment or Environmental Impact Statement required under the National Environmental Policy Act §§ 102, 42 U.S.C. §§ 4332 or implementing federal regulations.

~~(c) Upon notification of a proposed federal license or permit the Department will initiate appropriate interagency coordination and identify additional information needs.~~

~~(d) Within 3 months of receipt of the applicant's consistency certification and the information and data required pursuant to 15 C.F.R. § 930.58, the Department will do one of the following:~~

~~1. concur with the applicant's determination;~~

~~2. concur with the applicant's determination subject to any conditions agreed upon pursuant to 15 C.F.R. 930.64(e);~~

~~3. object to the applicant's determination; or~~

~~4. notify, in writing, the applicant and federal agency of the status of the matter and the basis for further delay.~~

(2) Pursuant to 15 C.F.R. Part 930, Subpart E, any proposed activity requiring a federal license or permit which is described in detail in any plan for the exploration of, or development of, or production from, any area leased under the Outer Continental Shelf Lands Act, (43 U.S.C. 1331 et seq.), and the regulations under that Act, which is submitted to the United States Secretary of the Interior and which affects the coastal area is required to comply with the management program and to be conducted in a manner consistent with the management program. The Department shall review and respond to a federal license or permit applicant's consistency certification for the exploration of, or development of, or production from, any area leased under the Outer Continental Shelf Lands Act in accordance with the provisions of 15 CFR Part 930, Subpart E.

(a) In addition to the data and information required to be furnished to the Department pursuant to 15 C.F.R. §§ 930.7776, the applicant shall identify the following applicable documents and shall furnish copies of such documents upon request:

1. The spill contingency plan including a listing of on-rig pollution control equipment available for immediate use;

2. National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency under the Federal Water Pollution Control Act §§ 402, 33 U.S.C. §§ 1342; and

3. Environmental Assessment or Environmental Impact Statement required under the National Environmental Policy Act §§ 102, 42 U.S.C. §§ 4332 or implementing federal regulation.

~~(b) Upon receipt of the consistency certification and the required information set forth in paragraph (2)(a) of this rule, the Department will initiate~~

~~its review and appropriate interagency coordination and identify additional information needs.~~

~~(c) Within 3 months of receipt of the consistency certification and required information, the Department will do one of the following:~~

~~1. concur with the consistency certification; or~~

~~2. object to the consistency certification; or~~

~~3. notify in writing the applicant, the Secretary of the Department of the Interior and the Assistant Administrator of Coastal Zone Management, NOAA, of the status and basis for further delay.~~

**Author:** John C. Carlton; Michael Sherman.

**Statutory Authority:** Code of Alabama 1975, §§ 9-7-16, 22-22A-5, 22-22A-6, 22-22A-8.

**History:** (effective date) June 30, 1994; (amended effective date) April 26, 1995; XXXXXXX.