

practicable. For products with an extended shelf life, such as those related to filing and paying taxes, the IRS will not print any pictures or biographical data relating to missing children without obtaining from the National Center a waiver of the 3-month shelf-life guideline.

(d) *Reports and contact official.* IRS shall compile and submit to OJJDP reports on its experience in implementing Public Law 99-87, 99 Stat. 290, as required by that office. The IRS contact person is: Chief, Business Publications Section (or successor office), Tax Forms and Publications Division, Technical Publications Branch, OP:FS:FP:P:3, Room 5613, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

(e) *Period of applicability.* This section is applicable December 13, 1999 through December 31, 2002.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 99-32098 Filed 12-10-99; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-113-FOR]

#### Virginia Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides clarification of an existing State policy directive concerning permit revisions. The amendment is intended to improve the operational efficiency of the State program.

**EFFECTIVE DATE:** December 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303.

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085-61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

#### II. Submission of the Amendment

By letter dated November 17, 1998 (Administrative Record No. VA-959), the Virginia Department of Mines, Minerals and Energy (DMME) submitted a clarification dated September 18, 1998, to its existing policy guidelines concerning the applicable information and procedural standards for permit revisions. The Virginia regulations at 4VAC 25-130-774.13(b)(2) require the Virginia Division of Mined Land Reclamation to establish such guidelines.

We announced receipt of the proposed amendment in the December 23, 1998, **Federal Register** (63 FR 71047), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1999. No one requested to speak at a public hearing, so no hearing was held.

#### III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

The clarification to the Virginia program is as follows:

The following information provides guidance to improve consistency and to enable you to properly plan for any addition of acreage to your permit. The Virginia law and regulation dealing with such additions conform to the federal definitions.

The Virginia Regulation at 4 VAC 25-130-774.13(d) requires:

Request to change permit boundary. Any extension to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

Consistent with this regulation, any request for a non-incidental extension to

the area covered by an existing permit shall be made by application for a new permit using the Division's permit application forms DMLR-PT-034e, DMLR-PT-034p, DMLR-PT-034o. It should be noted that these new forms are the same forms that the Division will use to implement Electronic Permitting in a few months. Implementing usage of these forms at this time will be a precursor to Electronic Permitting and will allow permittees to become familiar with the format of what will be required for Electronic Permitting. Permittees may use one of two options in submitting the application for a new permit:

1. The application may be for a completely new permit for the proposed area, with a new permit number issued and new issuance, expiration and anniversary dates assigned; or

2. The application may combine the existing permit area with the proposed additional area. The permit number would remain the same, as well as the permit issuance, expiration and anniversary date. This application may reference any applicable parts of the previously approved permit plans (with copies of the relevant sections included), but it shall provide all the information necessary for a new permit on the proposed additional area. This new information shall also include any portions of the plans for the previously approved permit area, if they are affected by the addition of the new area and shall be revised. The application will be processed as a new permit application.

With these two options, the applicant retains the discretion to apply for a separate and distinct permit for the new area, resulting in two separate permits with different permit numbers or to retain the existing permit number. However, when DMLR finds the new area is not a functional extension of the existing permit, but rather a separate operation, the Division may require an application for a separate permit.

Incidental boundary revisions (IBR) include only minor changes to permit boundaries that are incidental to the approved operations; such as road alignment, drainage alignment, parking areas, additional entries/punch-outs for underground operations, or other non-coal removal functions necessary for the orderly and continuous conduct of the approved operation.

A proposal to increase the area available for coal removal will not be treated as an IBR unless the coal removal is incidental to the primary purpose of the revision. For example, if the realignment of a road also involved mining a small amount of coal in the

road cut, and/or the increase in area is minor then it may be deemed an IBR. The Division may also approve small adjustments to the permit boundary as an IBR when there is no net increase in the permitted area.

The Federal regulations concerning requests to change permit boundaries occur at 30 CFR 774.13—Permit revisions. 30 CFR 774.13(d) provides the following: “Request to change permit boundary. Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit. The Virginia regulations at 4 VAC 25–130–774.13(d) mirror the Federal requirement.

The Virginia amendment does not alter the requirement to make application for a new permit for all boundary revisions, except incidental boundary revisions. The amendment identifies the permit application forms to be used, and indicates that the forms will also be used with future applications under Electronic Permitting. The amendment further identifies two options permittees may use in submitting the application for a new permit. There are no direct counterparts to these policy guidelines in the Federal regulations at 30 CFR 774.13(d) concerning requests to change permit boundaries. We find, however, that the policy guidance does not change the requirements for a new permit (information, public notice and hearing opportunities) that revisions, except for incidental boundary revisions, must meet. Therefore, the guidance is consistent with the Federal regulations at 30 CFR 774.13(d), and can be approved.

The State policy guidance also addresses incidental boundary revisions (IBR). The Federal regulations provide no specific guidance on IBR’s, nor do they define the term “incidental.” Thus, the scale and extent of incidental boundary revisions is left to the State regulatory authority to incorporate into the State program. Classification as an incidental boundary revision still requires review and evaluation by the State. In 1986 (51 FR 42548), we approved Virginia’s guidelines for identifying significant and minor permit revisions. The current amendment adds to, but does not replace, those guidelines. In cases where coal removal is involved, we believe that to be consistent with 30 CFR 774.13(d), coal removal cannot be the primary purpose of an IBR. The Virginia policy requires that coal removal must be incidental to the primary purpose of the IBR.

We find that the State’s policy concerning IBR’s does not render the

Virginia program less effective than 30 CFR 774.13(d), that Virginia has reasonably exercised its discretion, and that the policy is not inconsistent with SMCRA and the Federal regulations. Therefore, the policy can be approved.

#### IV. Summary and Disposition of Comments

##### *Federal Agency Comments*

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and said that there appears to be no conflict with MSHA regulations and/or procedures and that the amendment is deemed appropriate.

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded and concluded that its position is that the amendment should be approved. The NRCS also stated that the definition of “incidental boundary revision” is somewhat arbitrary, and that a more definable limit between a boundary revision that is incidental and the need to seek a new or revised permit may be needed. The Federal regulations at 30 CFR 774.13(d) provide that any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

The Federal regulations do not define the term “incidental boundary revision.” Therefore, it is each State’s obligation to determine when a boundary revision is significant and when it is incidental.

4 VAC 25–130–774.13(b)(2) require the DMME to establish guidelines for identifying the scale or extent of permit revisions that would require an application for a new permit. By letter dated August 14, 1986, Virginia submitted a listing of the circumstances under which a revision would be considered significant (and which are subjected to the entire permit information, notice, and participation requirements) and those under which it would be considered minor. We reviewed and then approved Virginia’s listing on November 25, 1986 (51 FR 42548). The current submittal is intended to further clarify the 1986 listing.

The U.S. Fish and Wildlife Service (USFWS) responded to the current submittal and stated that to minimize impacts to listed species or habitat, whenever a revision is determined to be an IBR, an assessment should be completed to identify any threats to

protected species. These findings should then be presented to the USFWS for final determination to insure such action will not adversely affect Federally listed species or designated critical habitat.

We asked the DMME to respond to the USFWS comments. DMME stated that Virginia makes the requested assessment and findings. These assessments and findings are made prior to the issuance of the initial permit (4 VAC 25–130–773.15(c)(10) and 25–130–780.16). These findings are then reviewed halfway through the permit term (4 VAC 25–130–774.11), during the quarterly on-site inspections (4 VAC 25–130–840.11) and if there is any permit renewal (4 VAC 25–130–773.15(c)(10)). Additionally, certain permit revisions including permit boundary revisions may require notice and participation by governmental entities. DMME stated that permit revisions are divided into four classifications: (1) Significant revisions which are subjected to the entire permit information, notice, and participation requirements; (2) minor revisions which by definition do not affect the conditions or have impacts that were not considered or addressed in the initial assessment and findings [minor revisions must still contain sufficient information to establish their inconsequential nature]; (3) incidental boundary revisions and (4) significant boundary revisions. Only those boundary revisions that qualify as an IBR pursuant to the 1998 guidelines and qualify as a minor revision pursuant to the 1986 guidelines will be exempted from the notice and participation standards. Thus we agree that Virginia’s existing requirements satisfy USFWS’ request.

Nonetheless, we asked the USFWS to comment on the DMME response. The USFWS stated that the terms, conditions and findings for individual Virginia program permits may fall short of providing adequate protection to all Federally listed species. As an example, the USFWS stated that it has noticed during permit reviews that the ecological information provided in permit applications is altogether inadequate to substantiate risk to threatened and endangered resources. This uncertainty, the USFWS stated, hinders reviewers, such as the USFWS or the DMLR, in their obligation to develop appropriate terms and conditions to prevent resource injury. The USFWS recommended the following changes to alleviate the uncertainty it sees in the permitting process.

First, the USFWS recommended that standardized biological reporting and

monitoring guidelines should be developed, approved and implemented for all permit applications. The USFWS stated that it has encouraged the State to develop fish and wildlife reporting and monitoring guidelines and has offered to assist in this endeavor. It appears from its comments above, that the USFWS is more concerned with the general level of actual reporting and monitoring of biological information that is provided in all Virginia permit applications, than it is with the written guidelines established for IBR's. This amendment only concerns guidelines for IBR's, thus, USFWS' recommendation is beyond the scope of this amendment. Also, our oversight of the Virginia program has not identified such a problem. However, we will look into USFWS' allegations. We encourage the USFWS and the DMME to work together to address the USFWS concerns.

Second, the USFWS recommended that a numeric (acreage) condition be set that would define the extent and scale of IBR's. This would prevent areas of several hundred acres from being included as an IBR or considered a minor revision of an inconsequential nature and excluded from any agency review process. As we discussed above in the finding, we believe that the State has adequately shown that the proposed amendment is consistent with and no less effective than the Federal regulations. The Federal regulations do not define the term "incidental" nor does OSM's only directive on IBR's. See, "Incidental Boundary Revisions" (REG-19). Therefore, the Virginia program is not less effective than the Federal regulations because it does not contain an acreage standard. However, we do not discourage the development of such a standard.

It is our opinion that the proposed amendment does not lessen the effectiveness of the Virginia program. It is also our opinion that our approval of this amendment is not likely to jeopardize the continued existence of any Federally listed, threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. Consequently, we are approving the proposed amendment.

#### *Public Comments*

We solicited public comments on the amendment. The Virginia Department of Historic Resources responded and stated that the amendment will not affect historic properties and it has no objection to the amendment.

#### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to any provisions of the State program amendment that relate to air or water quality standards promulgated 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 Virginia proposed pertain to air or water quality standards. However, OSM requested EPA's comments on the proposed amendment. EPA did not provide any comments.

#### **V. Director's Decision**

Based on the above findings, we approve the amendment submitted by Virginia on November 17, 1998, that clarifies the informational and procedural requirements for permit revisions that propose to change an existing permit boundary.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 946 which codifies decisions concerning the Virginia program. We are making this final rule effective immediately to expedite the State program amendment process, and to encourage Virginia to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### **VI. 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 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 946—VIRGINIA**

1. The authority citation for Part 946 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 946.15 Approval of Virginia regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * November 17, 1998 .....	* * December 13, 1999 .....	* * * * * Policy clarification for implementing 4 VAC 25–130–774.13(d).

[FR Doc. 99–32210 Filed 12–10–99; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF DEFENSE**

**Corps of Engineers, Department of the Army**

**33 CFR Part 207**

**St. Marys Falls Canal and Locks, Michigan; Use, Administration and Navigation**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations on procedures to navigate the St. Marys Falls Canal and Soo Locks at Sault St. Marie, Michigan to incorporate changes in navigation procedures published in Notice to Navigation Interests over the last three years. The St. Marys Falls Canal and Locks navigation regulation is amended to change the location where up bound vessels seeking passage through the Soo Locks request lock dispatch. This regulation also establishes the minimum number of line handlers that vessels should have while locking through the Soo Locks, place a restriction on the use of bow/stern thrusters while transiting through the Soo Locks, add a procedure for vessels departing from the MacArthur and Poe Locks simultaneously or at approximately the same time, and add a tug assist procedure for self-powered vessels.

**DATES:** The final rule is effective January 12, 2000.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW–OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Hilton, Dredging and Navigation Branch (CECW-OD) at (202) 761–8830 or Mr. Michael O’Bryan, Assistant Chief, Construction-Operations Division, Detroit District at (313) 226–6444.

**SUPPLEMENTARY INFORMATION:** The notice of proposed rulemaking was published on Tuesday, August 31, 1999, vol. 64, No. 168, pages 47462–47464.

Pursuant to its authority in Section 4 of the Rivers and Harbors Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 1), the Corps is amending the regulations in 33 CFR 207.440(c), (e), (f), (h), and (r). The regulation governing the operation of the St. Marys Falls Canal and Locks, 33 CFR 207.440 was adopted on November 27, 1945 (10 FR 14451) and has been amended at various times.

Paragraph (c) is amended to formally establish the call-in location and change in call sign currently being utilized by vessel owners. The call sign was changed due to the realignment of the Corps of Engineers Division Offices and was published in a Notice to Navigation Interests on November 25, 1997. Amending paragraph (c) responds to a request from users of the Soo Locks to further formalize the up bound call-in point by changing the regulation for operating the locks.

Paragraph (e) is amended to establish a requirement for vessels passing through the locks to provide line handlers. Over the past decade, the number of line handlers provided by the Government has decreased. On April 19, 1996, the Corps Detroit District published a Notice to Navigation Interests indicating that the Government would no longer provide pier line handlers. This amendment adds a requirement that vessels provide line handlers for passage through the locks and delineates the number of line handlers required based on weather and vessel conditions.

Paragraph (f) is amended to restrict the use of bow and stern thrusters while the vessel is in the locks to reduce the negative effects caused by the currents and water movement created by use of thrusters that may damage the locks walls and gates.

Paragraph (h) is amended to establish a procedure for the order of departure for vessels attempting to leave the MacArthur and Poe Locks simultaneously. This procedure is a

safety measure to prevent two vessels from being in the lock canal at the same time.

Paragraph (r) is amended to establish a tug-assist requirement for vessels without bow and stern thrusters and for other types of powered vessels that may have difficulty maneuvering in close quarters while navigating at low speed. High winds, changing currents and inclement weather may affect a vessel’s ability to maneuver within close quarters while at low speeds.

This final rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this final rule will not have a significant impact on small business entities.

**Comments on the Proposed Rule**

One comment was received to the August 31, 1999, **Federal Register** notice and the August 31, 1999, Public Notice issued by the Corps of Engineers Detroit District. The commenter’s association represents eleven U.S.-flag Great Lakes fleets that have a combined total of 61 vessels. The association supports the changes, but recommended two changes in the navigation procedures. First, they recommend that § 207.440(e)(1) reflect the changes in manning levels, duty assignments and designation of personnel and automated systems currently in use. The manning levels currently in use by most domestic and foreign vessels 400 gross tons or over navigating the canal under their own power have the following ship’s personnel: In the pilot house, on the bridge, the master. One mate and one able body seaman shall be on watch and available to assist; in the engine room, the engineering watch officer. The chief engineer shall be available to assist. The second recommendation is to amend § 207.440(h)(2)(i) to add a new § 207.440(h)(2)(i)(C) and delete § 207.440(h)(ii)(B). The recommended new paragraph would read “If two masters agree to a different departure scheme they both shall notify the lockmaster and request a change to the