

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*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 that 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.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (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, geographic regions, or Federal, State or local governmental agencies; 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 rule, 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 rule.

*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 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 2004.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04-20660 Filed 9-13-04; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 946****[VA-121-FOR]****Virginia Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises Virginia's Coal Surface Mining Reclamation Regulations concerning performance bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund. The amendment is intended to conform the performance bond release procedures that are applied to Virginia's "alternative bonding system" with bond release procedures used for other performance bonds. The amendment is also intended to clarify language regarding minimum bond amounts set for permits.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on October 14, 2004. If requested, we will hold a public hearing on the amendment on October 9, 2004. We will accept requests to speak at hearing until 4 p.m. (local time), on September 29, 2004.

**ADDRESSES:** You may submit comments, identified by VA-121-FOR, by any of the following methods:

- *E-mail:* [rpenn@osmre.gov](mailto:rpenn@osmre.gov). Include VA-121-FOR in the subject line of the message.

- *Mail/Hand Delivery:* 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.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Big Stone Gap Field Office.

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. E-mail: [rpenn@osmre.gov](mailto:rpenn@osmre.gov).

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523-8100. E-mail: [lsv@mme.state.va.us](mailto:lsv@mme.state.va.us).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303. Internet: [rpenn@osmre.gov](mailto:rpenn@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background on the Virginia Program  
II. Description of the Proposed Amendment  
III. Public Comment Procedures  
IV. Procedural Determinations

**I. Background on the Virginia 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, "\* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent

with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia’s program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

## II. Discussion of the Proposed Amendment

By letter dated July 20, 2004 (Administrative Record Number VA-1036) the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that Virginia is amending its regulations at 4 Virginia Administrative Code (VAC) 25-130-801.17, to conform the performance bond release procedures that are applied to bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund, Virginia’s “alternative bonding system,” with bond release procedures used for other performance bonds. The DMME stated that the amendment will allow use of a phased bond release for all permitted coal mine sites in Virginia. The DMME stated that the amendment also clarifies language regarding minimum bond amounts set for permits.

The Virginia regulations at 4 VAC 25-130 part 801 concern the Coal Surface Mining Reclamation Fund, penalties, and self-bonding. The proposed amendment revises 4 VAC 25-130-801.17, concerning bond release application, and 4 VAC 25-130-801.18, concerning criteria for bond release, as follows:

4 VAC 25-130-801.17

This provision is amended by adding and deleting language at 4 VAC 25-130-801.17(a), by deleting 4 VAC 25-130-801.17(a)(1) through (a)(3), and by deleting 4 VAC 25-130-801.17(b) through (e). As amended, 4 VAC 25-130-801.17 provides as follows:

(a) The permittee participating in the Pool Bond Fund, or any person authorized to act upon his behalf, may file an application with the division [Division of Mined Land Reclamation] for the Phase I, II or III release of the bond furnished in accordance with 4 VAC 25-130-801.12(b) for the permit area or any applicable increment thereof. The bond release application,

the procedural requirements and the released percentages shall be consistent with the release criteria of 4 VAC 25-130-800.40. However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to Section 45.1-241 and 45.1-270.3.B of the Virginia Coal Surface Mining Control and Reclamation Act prior to completion of Phase III reclamation of the entire permit area.

4 VAC 25-130-801.18

This provision is amended by adding and deleting language at 4 VAC 25-130-801.18(a) and (b), by deleting 4 VAC 25-130-801.18(c), and by amending and recodifying existing 4 VAC 25-130-801.18(d) as 4 VAC 25-130-801.18(c). As amended, 4 VAC 25-130-801.18 provides as follows:

(a) The division shall release bond furnished in accordance with Section 45.1-241 and 45.1-270.3 of the Virginia Coal Surface Mining Control and Reclamation Act through the standards specified at 4 VAC 25-130-800.40 upon receipt of an application for Phase I, II or III release.

(b) The division shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area.

(c) In the event a forfeiture occurs the division may, after utilizing the available bond monies, utilize the Fund as necessary to complete reclamation liabilities for the permit area.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

### Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Field Office may not be logged in.

### Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of

special characters and any form of encryption. Please also include “Attn: SATS NO. VA-121-FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523-4303.

### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on September 29, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person

listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

#### IV. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule 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 rule is exempt from review by the Office of Management and Budget 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 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 because each 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 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 rule 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 rule on Federally-recognized Indian tribes and have determined that the rule 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 our decision is on a State regulatory program and does not involve a Federal regulation 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 rule 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 rule 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 rule 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 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 certifies 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. 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.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

##### *Unfunded Mandates*

This rule 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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 2004.

**Tim L. Dieringer,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04-20661 Filed 9-13-04; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 16**

[OEI-2002-0009; FRL-7532-2]

**RIN 2025-AA13**

#### **Implementation of Privacy Act of 1974; Revision to the Privacy Act Regulations**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.