

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: March 2, 2007.

**H. Vann Weaver,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E7-6577 Filed 4-6-07; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 946**

[VA-124-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 the Virginia Coal Surface Mining Reclamation Regulations concerning the distribution of topsoil and subsoil materials, revegetation standards for success, and to allow approval of natural stream restoration channel design, as developed in consultation with the Army Corps of Engineers.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on May 9, 2007. If requested, we will hold a public hearing on the amendment on May 4, 2007. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 24, 2007.

**ADDRESSES:** You may submit comments, identified by VA-124-FOR, by any of the following methods:

- *E-mail:* [tdieringer@osmre.gov](mailto:tdieringer@osmre.gov). Include VA-124-FOR in the subject line of the message.
- *Mail/Hand Delivery:* Mr. Tim Dieringer, Director, Knoxville 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 Area Office.

Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (276) 523-4303. E-mail: [tdieringer@osmre.gov](mailto:tdieringer@osmre.gov).

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (276) 523-8100. E-mail: [lsv@mme.state.va.us](mailto:lsv@mme.state.va.us).

**FOR FURTHER INFORMATION CONTACT**: Mr. Tim Dieringer, Director, Knoxville Field Office; Telephone: (276) 523-4303. E-mail: [tdieringer@osmre.gov](mailto:tdieringer@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. Description of the Proposed Amendment**

By letter dated February 13, 2007 (Administrative Record Number VA-1059), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment reflects revisions of the Virginia rules to be consistent with the Federal rules to allow approval of natural stream restoration channel design, as developed in consultation with the Army Corp of Engineers.

Specifically, the following amendments are proposed:

##### *1. 4VAC 25-130-816.22 and 817.22 Topsoil and Subsoil*

Subsections (d), concerning redistribution of topsoil and subsoil materials are proposed to be revised. Subsections (d) currently provide as follows:

(d) Redistribution.

- (1) Topsoil materials removed under Paragraph (a) of this section shall be redistributed in a manner that—
  - (i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;
  - (ii) Prevents excess compaction of the materials; and
  - (iii) Protects the materials from wind and water erosion before and after seeding and planting.

Subparts (d)(1) are proposed to be amended by inserting the words "and substitutes" between the word "materials" and the word "removed." Also, the phrase "and (b)" is added immediately after the phrase "under subpart (a)." Subparts (d)(1)(i) are amended by adding the word "when" between the word "thickness" and the word "consistent." Also, the following sentence is added at the end of subparts (d)(1)(i): "Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit."

As amended, 4VAC 25-130-816.22(d) and 817.22(d) provide as follows:

(d) Redistribution.

- (1) Topsoil materials and substitutes removed under Paragraphs (a) and (b) of this

section shall be redistributed in a manner that—

- (i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;
- (ii) Prevents excess compaction of the materials; and
- (iii) Protects the materials from wind and water erosion before and after seeding and planting.

In its submittal letter, the DMME stated that these changes in the Virginia rules will ensure they are consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; see **Federal Register** Vol. 71, No. 168, pages 51684 through 51706, which became final on August 30, 2006. In that **Federal Register** notice, OSM finalized changes to its regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. The revised Federal provisions govern topsoil redistribution and revegetation success standards.

##### *2. 4VAC25-130-816.43 and 817.43 Diversions*

Subsections (a), concerning general requirements, are proposed to be amended by revising subparts (a)(4) and deleting subparts (a)(5) in their entirety. Currently, subparts (a)(4) and (a)(5) provide as follow:

(a) General requirements.

\* \* \* \* \*

(4) Diversions which convey water continuously or frequently shall be lined with rock rip rap to at least the normal flow depth, including an allowance for freeboard. Diversions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below.

(5) The maximum permissible velocity for the following methods of stabilization are:

Vegetated channel constructed in soil: 3.5 feet per second;  
 Vegetated channel with jute netting: 5.0 feet per second;  
 Rock rip rap lined channel: 16.0 feet per second;  
 Channel constructed in competent bedrock: No limit.

\* \* \* \* \*

Subparts (a)(4) are amended by deleting the second sentence and by revising the first sentence. In the first sentence, all the words following the phrase "continuously or frequently shall be" are deleted and are replaced by the words "designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this

Part and any other criteria set by the Division.”

As amended, 4VAC 25–130–816.43(a)(4) and 817.43(a)(4) provide as follows:

(4) Diversions which convey water continuously or frequently shall be designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the Division.

In its submittal letter, the DMME stated that these changes to the Virginia rules will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers and will ensure they are consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; see **Federal Register** Vol. 71, No. 168, pages 51684 through 51706, which became final on August 30, 2006. In that **Federal Register** notice, OSM finalized changes to its regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. The Federal provisions govern topsoil redistribution and revegetation success standards.

3. 4VAC25–130–816.116 and 817.116 *Revegetation; Standards for Success*

Subsections (a), concerning ground cover, production, or stocking, are proposed to be amended by revising subpart (a)(2). Subsections (b), concerning standards for success, are proposed to be amended by revising subparts (b)(3)(v)(C). Currently, subparts (a)(2) and (b)(3)(v)(C) provide as follows:

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25–130–816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

\* \* \* \* \*

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

\* \* \* \* \*

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub

stocking and vegetative ground cover. Such parameters are described as follows:

\* \* \* \* \*

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 90% and an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

\* \* \* \* \*

Subparts (a)(2) are amended by deleting the existing “90%” success standard and replacing that standard with a “70%” success standard. In addition, the following phrase is added to the end of the first sentence: “except as provided by (b) of this section.” Also, the following parenthetical sentence is deleted: “The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error.”

Subparts (b)(3)(v)(C) are amended by deleting the “90%” success standard and replacing that standard with a “70%” success standard.

As amended, 4VAC 25–130–816/817.116(a)(2) and (b)(3)(v)(C) provide as follows:

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25–130–816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 70% of the success standard, except as provided by (b) of this section. Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

\* \* \* \* \*

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

\* \* \* \* \*

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or

forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

\* \* \* \* \*

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 70% and an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

\* \* \* \* \*

In its submittal letter, the DMME stated that these changes in the Virginia rules will ensure they are consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; see **Federal Register** Vol. 71, No. 168, pages 51684 through 51706, which became final on August 30, 2006. In that **Federal Register** notice, OSM finalized changes to its regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. The revisions govern topsoil redistribution and revegetation success standards.

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 Area Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. VA-124-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 Area office at (276) 523-4303.

#### *Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *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 April 24, 2007. 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: March 2, 2007.

**H. Vann Weaver,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E7-6578 Filed 4-6-07; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD05-07-029]

RIN 1625-AA08

**Special Local Regulation for Marine Events; Roanoke River, Plymouth, North Carolina**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish special local regulations

during the ‘‘Plymouth Drag Boat Race Series’’, a series of power boat races to be held on the waters of the Roanoke River, Plymouth, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Roanoke River adjacent to Plymouth, North Carolina during the power boat race.

**DATES:** Comments and related material must reach the Coast Guard on or before May 9, 2007.

**ADDRESSES:** You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704-5004, hand deliver them to room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 391-8149, or e-mail them to *Dennis.M.Sens@uscg.mil*. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building, Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247-4525 or via e-mail to *Christopher.D.Humphrey@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CCGD05-07-029], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address

under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Outboard Drag Boat Association will be sponsoring a series of seven (7) power boat racing events titled the ‘‘Plymouth Drag Boat Race’’. The power boat races will be held on the following dates: June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007. The races will be held on the Roanoke River immediately adjacent to Plymouth, North Carolina. The power boat races will consist of approximately (30) vessels conducting high speed straight line runs along the river and parallel with the shoreline. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the power boat races.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish special local regulations on specified waters of the Roanoke River, in the vicinity of Plymouth, NC. The regulated area includes a section of the Roanoke River approximately one mile long and bounded in width by each shoreline, immediately adjacent to Plymouth, NC. The effect of this regulation would be to restrict general navigation in the regulated area during the drag boat races. This special local regulation will be enforced from 10 a.m. to 8:30 p.m. on June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. This regulation is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

**Regulatory Evaluation**

This proposed rule is not a ‘‘significant regulatory action’’ under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.