

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. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

*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 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 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 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 did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 2007.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Region.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

[Docket ID: OSM-2007-0013; SATS No. VA-124-FOR]

**Virginia Regulatory Program**

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We are announcing receipt of revisions to a previously proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern Virginia’s standards for revegetation success for certain postmining land uses. The amendment is intended to render the State’s regulations no less effective than the Secretary’s regulations in meeting the requirements of the Act. This document gives the times and locations that the Virginia program and proposed amendment to that program are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

**DATES:** Comments on the proposed rule must be received on or before January 2, 2008 to ensure our consideration.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule is listed under the agency name “OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT.” It has been assigned Docket ID: OSM-2007-0013.

If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and do the following. Find the blue banner with the words “Search Documents” and go to “Optional Step 2.” Select “Office of Surface Mining Reclamation and Enforcement” from the agency drop-down menu, then click the “Submit” button at the bottom of the page. The next screen will have the title “Document Search Results.” The proposed rule is listed under the Docket ID as OSM-2007-0013. If you click on OSM-2007-0013, you can view the proposed rule, add comments, and view any comments submitted by other persons.

- *Mail/Hand Delivery:* Mr. Earl Bandy, Director, Knoxville Field Office,

Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219. Please include the Docket ID (OSM-2007-0013) with your written comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

You may also request to speak at a public hearing by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* The proposed rule, additional documentation, and any comments that are submitted may be viewed over the internet at [www.regulations.gov](http://www.regulations.gov). Look for Docket ID: OSM-2007-0013.

In addition, 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:

Mr. Earl Bandy, 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: [ebandy@osmre.gov](mailto:ebandy@osmre.gov).

Mr. Gavin Bledsoe, Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (276) 523-8100. E-mail: [gavin.bledsoe@dmme.virginia.gov](mailto:gavin.bledsoe@dmme.virginia.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl Bandy, Director, Knoxville Field Office; Telephone: (276) 523-4303. E-mail: [ebandy@osmre.gov](mailto:ebandy@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

#### **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 submission, DMME proposed to revise the Virginia program regarding, among other things, revegetation success standards. We announced receipt of the proposed amendment in the April 9, 2007, **Federal Register** (72 FR 17452). The public comment period closed on May 9, 2007.

The portion of the February 13, 2007, amendment dealing with revegetation success standards involved proposed changes to Virginia's regulations at 4 VAC 25-130-816 and 817.116(a)(2) and (b)(3)(v)(C). DMME proposed to revise subsection (a)(2) to consider the levels of ground cover, production, or stocking as being equal to the approved success standard when they were not less than 70% of that success standard. DMME also proposed to revise subsection (a)(2) by adding an exception to the success standard requirements as provided for in subsection (b). Subsection (b) provides success standards for certain approved postmining land uses. Finally, DMME proposed to amend subsection (a)(2) by deleting a provision requiring that the sampling techniques for measuring success use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). In subsection (b)(3)(v)(C), DMME proposed to amend standards for herbaceous vegetation success on postmining land uses where woody plants are used for wildlife management, recreation, shelter belts or forest uses other than commercial forest land by requiring that areas planted with a mixture of herbaceous and woody species sustain a herbaceous ground cover of 70%.

After the February 13, 2007, proposed rule was published in the **Federal Register**, DMME revised the portion of its proposed amendment dealing with revegetation success standards. By electronic mail dated April 18, 2007, (Administrative Record Number VA-1074), DMME stated that it wished to withdraw the changes it previously made to 4 VAC 25-130-816 and 817.116(a)(2) regarding the sampling techniques and retain the original language. Additionally, DMME indicated that it wished to revise the herbaceous ground cover success standard of 4 VAC 25-130-816 and 817.117(b)(3)(v)(C) to require that postmining land uses of wildlife management, recreation, shelter belts, or forest uses other than commercial forest land that are planted with a mixture of herbaceous and woody species must sustain a herbaceous ground cover of 80%. We announced these proposed revisions in a July 5, 2007, **Federal Register** notice (72 FR 36632) in which we reopened the public comment period. The reopened public comment period closed July 20, 2007.

After our review of the second resubmission of the amendments and based on our discussions regarding the amendment with DMME, DMME chose to resubmit 4 VAC 25-130-816 and 817.116(b)(3) and 816 and 817.116(b)(3)(v)(C) with added language that would facilitate the growth of woody plants in areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forestry. By electronic mail dated August 30, 2007 (Administrative Record Number VA-1082), DMME stated that it would revise parts of 4 VAC 25-130-816 and 817.116 based, in part, on discussions with us regarding the benefits of using the Forestry Reclamation Approach (FRA). The FRA is a method for reclaiming coal-mined land to forests and is based on knowledge gained from both scientific research and experience. It is designed to restore forest land capability and accelerate the natural process of forest development. The FRA advocates selection of a suitable rooting medium for tree growth, loosely grading the growth medium to reduce compaction, using ground covers compatible with growing trees, planting early succession and commercially valuable tree species, and using proper tree planting techniques.

DMME's first proposed revision occurs at 4 VAC 25-130-816 and 817.116(b)(3). DMME is proposing to modify this section to indicate that for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, woody plants must

be stocked at least equal to the rates specified in the approved reclamation plan. Additionally, DMME is proposing to add a requirement that in order to minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. The proposed revisions correspond to the Federal regulations at 30 CFR 816 and 817.116(b)(3) that provide the standards for success of revegetation and are essentially identical to the ground cover standards for areas where trees will be planted that were adopted by OSM in the Tennessee Federal Program on March 2, 2007 (72 FR 9616) and codified at 30 CFR 942.816 and 942.817.

With this new amendment, 4 VAC 25-130-816 and 817.116(b)(3) is proposed to read as follows:

4 VAC 25-130-816.116(b)(3) and 817.116(b)(3). Revegetation; standards for success.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:

\* \* \* \* \*

DMME's second proposed revision occurs at 4 VAC 25-130-816 and 817.116(b)(3)(v)(C). DMME deleted "products, success of vegetation shall be determined on the basis of tree and shrub" and added "the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:"

With this new amendment, 4 VAC 25-130-816 and 817.116(b)(3)(v)(C) is proposed to read as follows:

4 VAC 25-130-816.116(b)(3)(v)(C) and 817.116(b)(3)(v)(C). Revegetation; standards for success.

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

\* \* \* \* \*

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover in accordance with guidance provided by the division and the approved forestry reclamation plan and establish 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.

\* \* \* \* \*

### 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 or Electronic Comments

Send your written or electronic comments to OSM at one of the addresses 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 cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above will be included in the docket for this rulemaking and considered.

#### Public 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.

#### List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 16, 2007.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

[FR Doc. E7-24392 Filed 12-14-07; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2007-1128; FRL-8506-9]

### Approval and Promulgation of Implementation Plans; Nebraska; Interstate Transport of Pollution

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a revision to the Nebraska State Implementation Plan (SIP) for the purpose of approving the Nebraska Department of Environmental Quality's (NDEQ) actions to address the "good neighbor" provisions of the Clean Air Act Section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. NDEQ has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, interference with plans in another state to prevent significant deterioration of air quality, and efforts of other states to protect visibility. The requirements for public notification were also met by NDEQ.

**DATES:** Comments on this proposed action must be received in writing by January 16, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2007-1128 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Michael Jay at (913) 551-7460, or by e-mail at [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the