

No. CF34–BJ S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) For Tier 2 fan disks with 2,500 or more CSLI on the effective date of this AD, perform an ECI on the Tier 2 fan disks within 500 CIS after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the ECI.

(ii) For Tier 2 fan disks with fewer than 2,500 CSLI on the effective date of this AD, perform an ECI on the Tier 2 fan disks within 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the ECI.

(iii) Thereafter, perform repetitive ECI on the Tier 2 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the repetitive ECI.

#### Inspections of Tier 3 Fan Disks

(m) For CF34–1A turbofan engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, CF34–3A, CF34–3A2, and CF34–3B turbofan engines with Tier 3 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB No. CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, do the following:

#### TEV Inspections, FPI, and ECI

(1) For Tier 3 fan disks not already inspected using GE ASB No. CF34–AL S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, perform a TEV inspection, FPI, and ECI on the Tier 3 fan disks within 3,500 CIS after September 12, 2007, or by March 19, 2012, whichever is earlier. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(2) For Tier 3 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB No. CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008; already inspected using GE ASB No. CF34–BJ S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, perform a TEV inspection and an ECI on the Tier 3 fan disks within 3,500 CSLI, but no later than March 19, 2012. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection and ECI.

(3) Repetitive ECI on the Tier 3 fan disks are not required.

#### Alternative Methods of Compliance

(n) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Mandatory Terminating Action

(o) Remove from service, Tier 1 and Tier 2 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB No. CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008; or CF34–BJ S/B 72–0212, Revision 04, dated October 27, 2008, before they exceed their

limited life cycles or September 30, 2018, whichever occurs first.

#### Related Information

(p) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [tara.chaidez@faa.gov](mailto:tara.chaidez@faa.gov); telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

(q) The following GE Alert Service Bulletins pertain to the subject of this AD:

- CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008,
- CF34–AL S/B 72–A0252, dated October 27, 2008,
- CF34–AL S/B 72–A0253, dated October 27, 2008,
- CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008,
- CF34–BJ S/B 72–A0234, dated October 27, 2008, and
- CF34–BJ S/B 72–A0235, dated October 27, 2008.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, for a copy of this service information.

Issued in Burlington, Massachusetts, on April 9, 2009.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E9–8787 Filed 4–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 935

[OH–253–FOR; Docket ID: OSM–2009–0001]

#### Ohio Regulatory Program

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

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

**SUMMARY:** We are announcing receipt of an amendment to the Ohio regulatory program (the “Ohio program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio has submitted changes to its regulations as a result of its five-year review of Ohio’s internal and procedural rules. Changes relate to practice and procedures before the reclamation commission, including definitions, commission meetings, appearance and practice before the commission; appeals to the reclamation

commission; filing and service of papers; temporary relief; responsive pleadings; discovery; motions; pre-hearing procedures; notice of hearings and continuance of hearings; site views and location of hearings; conduct of evidentiary hearings; reports and recommendations of the hearing officer; and decisions of the commission.

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., d.s.t. May 18, 2009. If requested, we will hold a public hearing on May 12, 2009. We will accept requests to speak at a hearing until 4 p.m., d.s.t. on May 4, 2009.

**ADDRESSES:** You may submit comments, identified by OH–253–FOR; Docket ID: OSM–2009–0001 by either of the following two methods:

*Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). The proposed rule has been assigned Docket ID: OSM–2009–0001. 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. Click on the “Advanced Docket Search” button on the right side of the screen. Type in the Docket ID OSM–2009–0001 and click the “Submit” button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2009–0001, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

*Mail/Hand Delivery/Courier:* Mr. George Rieger, Chief, Pittsburgh Field Division, Columbus Office, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Room 102, Columbus, Ohio 43230.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* In addition to obtaining copies of documents at [www.regulations.gov](http://www.regulations.gov), information may also be obtained 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 Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Columbus Office, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Room 102, Columbus, Ohio 43230, Telephone: (614) 416-2238, e-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Linda Osterman, Hearing Officer, Ohio Reclamation Commission, Ohio Department of Natural Resources, 2045 Morse Road, Bldg. F-2, Columbus, Ohio 43229, Telephone: (614) 262-1269, e-mail: [linda.osterman@dnr.state.oh.us](mailto:linda.osterman@dnr.state.oh.us).

**FOR FURTHER INFORMATION CONTACT:**

George Rieger, Telephone: (614) 416-2238. e-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Ohio 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 State 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 Ohio program on August 16, 1982. You can find additional background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval in the August 10, 1982, **Federal Register**, 47 FR 34688. You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11 and 935.15.

**II. Description of the Amendment**

By a letter dated January 22, 2009 (Administrative Record Number OH-2188-01), Ohio sent us changes to its procedural rules. Pursuant to Ohio Revised Code 119.032, all State agencies must review their internal and procedural rules every five years. In response to this requirement, the Ohio Reclamation Commission reviewed its procedural rules. The Commission's procedural rules are found at Ohio Administrative Code 1513-3-01 through 1513-3-22. This submission contains the changes made to the Ohio Administrative Code as a result of this

review. These changes are identified below, with additions italicized and deletions bracketed:

1513-3-01: *Definitions.*

(N) "*Regular business hours*" for the reclamation commission means 10 a.m. to 6 p.m. Monday through Friday, except for state holidays or other days in which offices of the government of the state of Ohio are permitted to close due to weather, safety or other unforeseeable events which present a risk to the public or to the commission employees. In the event of the absence of the office staff, contact information for the chairman and vice-chairman of the commission will be prominently posted at the commission offices.

[(N)] (O) "Rules of the reclamation commission" means rules 1513-3-01 to 1513-3-22 of the Administrative code and shall apply to appeals filed under both Chapters 1513. and 1514. of the Revised code, unless specifically provided otherwise.

1513-3-02: Internal regulations.

(B) Four members constitute a quorum, and no action of the commission shall be valid unless it has the concurrence of at least four members. Where, in rendering a decision, a concurrence of at least four commission members is not obtained, the existing record of proceedings may be submitted to any absent commission member, who will be permitted to participate in the rendering of the decision. [at a subsequent commission meeting.]

1513-3-02: Internal regulations.

(D) Pursuant to section 1513.05 of the Revised code, the reclamation commission shall elect [may appoint] a secretary, who shall perform such duties as the commission prescribes, including:

1513-3-02: Internal regulations.

(D)(4) Providing notice of all public meetings [hearings] of the reclamation commission in accordance with the following procedures:

(a) Any person may determine the time and place of regularly-scheduled public meetings [hearings or the time and place of any temporary relief hearings] by contacting the office of the reclamation commission during regular business hours;

(b) Upon request, any person may obtain advance notice of all regularly-scheduled public meetings [hearings] by supplying the office of the reclamation commission with stamped, self-addressed envelopes. The office will mail to such person a notice of the time and place of meetings [hearings] at least four calendar days before the meeting [hearing] is scheduled; [unless the hearing is a temporary relief hearing;]

(c) The reclamation commission shall provide the office of the reclamation commission with the time and place of meetings [hearings] requiring public notice under the provisions of this rule within sufficient time to enable the office to comply with the provisions of this rule.

(d) The time and location for commission meetings shall be announced in the Hannah Report published by Rotunda, Inc.

1513-3-02: Internal regulations.

(H) Any [The] transcript [or recording] of a [any] proceeding before the commission, if filed with the commission [shall be the property of the commission and] shall be made available for reproduction upon application to the commission and payment of reproduction costs.

(I) Issuance of subpoenas.

(1) Upon request of a party, or at the initiative of the commission, the commission shall issue subpoenas ad testificandum or duces tecum.

1513-3-03: Appearance and practice before the commission.

(C) Except as prohibited by section 4705.01 of the Revised code, any party may appear on his own behalf or may be represented by an attorney at law admitted to practice before the Supreme Court of Ohio, or by an attorney admitted to practice by the commission pursuant to a motion to appear pro hac vice. [In the absence of an attorney, a party may represent itself, a partnership may be represented by any of its members, a corporation or association may be represented by any of its officers and any governmental unit may be represented by an employee offering proof of authority.]

1513-3-04: Appeals to the reclamation commission.

(B) A notice of appeal must:

(7) Pursuant to section 1513.13 of the Revised Code, identify [Identify] the grounds upon which review is being sought, the manner in which appellant is aggrieved or adversely affected by the action of the chief of the division of mineral resources management and the relief sought on appeal;

1513-3-05: Filing and service of papers.

(H) If papers filed with the commission cite case law as authority in support of argument, the filing must include a copy of the case law cited and must refer to the page number or paragraph on which the relevant language is found.

1513-3-08: Temporary relief.

(F) The decision of the chairman of the reclamation commission to grant or deny temporary relief may be appealed to the [full] commission, including the

chairman who decided temporary relief, within thirty days after the chairman's issuance of the decision in accordance with the provisions of section 1513.13 of the Revised Code. The [full] commission may confine its review to the record developed at the temporary relief hearing conducted by the chairman. The [full] commission shall affirm the decision of the chairman, unless it determines that the chairman's decision is arbitrary, capricious, or otherwise inconsistent with law.

1513-3-09: Responsive pleadings.

(B) Unless the commission orders otherwise, the party ordered to file a response pursuant to this rule shall have ten days from the issuance of the commission's order to make such filing.

[(B) (C) Failure to respond when ordered may be treated as a failure to appear at hearing.

1513-3-10: Discovery.

(C) Discovery shall be conducted in accordance with the procedural provisions of the "Ohio Rules of Civil Procedure." Discovery may include oral depositions, written interrogatories to parties, inspection of premises, requests for admission, and inspection of documents. [not privileged.]

1513-3-11: Motions.

(A) Except for oral motions which must be made in proceedings on the record, or where the commission otherwise directs, any motion made to the reclamation commission shall:

(4) Be filed with the commission and served upon all parties to the proceeding at least ten [five] days in advance of the hearing, unless the movant demonstrates that unusual circumstances exist justifying an exception to this rule.

1513-3-11: Motions.

(C) Motions for reconsideration of any decision of the commission shall be made in writing within ten [fourteen] days after the issuance of the commission's decision. A motion for reconsideration shall state with particularity the grounds on which it is based. The filing of a motion for reconsideration does not extend the time for filing a notice of appeal in the appellate court.

1513-3-11: Motions.

(E) In compliance with the requirements of 1513-3-13(C)(2), motions for continuance of a hearing must be filed with the reclamation commission and served upon all parties to a proceeding at least fourteen days in advance of a hearing.

[(E)] (F) Unless the commission orders otherwise, any party to a proceeding shall have ten days from service of the motion or until hearing, whichever is earlier, to file a response to a motion.

[(F)] (G) Failure to make a timely motion or to file a statement in response to a motion may be construed as a waiver of objection.

1513-3-12: Pre-hearing procedures.

(A) The reclamation commission, or its hearing officer, may schedule and hold pre-hearing conferences for settlement or simplification of the issues in any appeal.

(B) Whenever a pre-hearing conference is held, the commission, or its hearing officer, may issue an order which recites the matters discussed, the agreements reached, and the rulings made at the pre-hearing conference.

(C) The commission, or its hearing officer, may require the filing of a pre-hearing statement by the parties to an appeal.

1513-3-13: Notice of hearings and continuance of hearings.

(C) Continuance of scheduled hearings.

(2) Motions for continuance of a hearing must be filed with the reclamation commission and served upon all parties to a proceeding at least fourteen [five] days in advance of a hearing.

(3) Motions for continuance made less than fourteen [five] days before hearing or at hearing shall be granted only upon demonstration that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.

1513-3-14: Site views and location of hearings.

(A) Site views.

(2) Subject to any applicable safety requirements, the [The] commission may, upon reasonable notice and at reasonable times, inspect any site or other premises when the commission is of the opinion that such a viewing would have a beneficial value in any matter pending before the commission.

(3) [Unless the right to a site view is statutorily prescribed, a] A quorum of commission members need not attend a site view.

(4) All parties shall have prior notice of a site view and shall have the right to be present. Parties shall be informed of any safety requirements prior to the site view. The commission may limit the number of persons, which may accompany a party at a site view.

1513-3-16: Conduct of evidentiary hearings.

(E) Written testimony.

(2) The use of a deposition in lieu of the [dependent's] deponent's oral testimony at hearing shall be allowed under the same provisions as are articulated in rule 32 of the "Ohio Rules of Civil Procedure." A party desiring to use a deposition, or any designated part

thereof, at hearing shall file the deposition with the commission and serve written notice to every other party at least five days prior to hearing.

(F) Witnesses.

(2) The commission may require each party in an appeal to identify prior to the commencement of a hearing each person who is or may be present and [in] his interest or who will or may be a witness for his cause in the appeal.

(G) If the appellant fails to appear personally or by counsel or other authorized representative at a hearing scheduled after being duly notified of the hearing by the mailing of a notice of hearing to such party's last known address, and if good cause for such failure to appear [appeal] is not shown, the commission shall dismiss the appeal.

(I) The reclamation commission may order the parties to a proceeding to submit post-hearing briefs or proposed findings of fact and conclusions of law at a time designated by the commission, on issues raised on the appeal or upon possible errors or omissions in the record or on any issues as the commission in its discretion shall determine. The commission may also order the parties to submit written closing arguments or proposed findings of fact and conclusions of law at the conclusion of hearing.

1513-3-18: Reports and recommendations of the hearing officer.

(F) Any party to a proceeding may have [seven] fourteen days from service of the objections to the report and recommendation of the hearing officer to file a response.

1513-3-19: Decisions of the commission.

(A) All decisions of the commission shall [incorporate] set forth:

- (1) Findings of fact;
- (2) Conclusions of law; and
- (3) An order granting or denying relief.

1513-3-19: Decisions of the commission.

(F) Remission of prepaid civil penalty assessments.

(1) If a review of a civil penalty assessment results in an order reducing or eliminating a civil penalty, the reclamation commission shall remit the funds to the appellant in accordance with division [(F)] (E) of section 1513.02 of the Revised Code.

### III. Public Comment Procedures

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

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the submission, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. 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 (*see ADDRESSES*) 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 may 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. We will not consider anonymous comments.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on May 4, 2009. If you are disabled and need reasonable 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 the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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 there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are 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 regulations.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) 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, to the extent allowable 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 because 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 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. 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 that our decision is on a State regulatory program and does not involve Federal regulations 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 a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*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 that is the subject of this rule is based on 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 governmental 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 on the analysis performed under various laws and executive orders for the counterpart Federal regulations.

### List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 2009.

**Thomas D. Shope,**

*Appalachian Regional Director.*

[FR Doc. E9-8885 Filed 4-16-09; 8:45 am]

BILLING CODE 4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-126-FOR; Docket ID OSM-2008-0012]

#### Virginia Regulatory Program

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

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

**SUMMARY:** We are reopening the public comment period on a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Since the close of the comment period, Virginia revised its regulations pertaining to Valid Existing Rights (VER) and made other minor wording and organizational changes. Virginia intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA and is responding, in part, to 30 CFR Part 732 letters.

**DATES:** We will accept written comments until 4 p.m., local time, May 4, 2009.

**ADDRESSES:** You may submit comments, identified by "VA-126-FOR/OSM-2008-0012" by any of the following methods:

- *E-mail:* [ebandy@osmre.gov](mailto:ebandy@osmre.gov).
- *Mail/Hand Delivery:* Earl Bandy, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 710 Locust Street, 2nd Floor, Knoxville, Tennessee 37902, Telephone: (865) 545-4103.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID OSM-2008-0012. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and do the following. Click on the "Advanced Docket Search" button on the right side of the screen. Type in the Docket ID OSM-2008-0012 and click the "Submit" button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM-2008-0012, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

*Instructions:* All submissions received must include the agency docket number "OSM-2008-0012/VA-126-FOR" for this rulemaking. For detailed

instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" section in 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 submission, a listing of any scheduled public hearings, and all written comments received in response to this document at OSM's Knoxville Field Office at the address listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the submission by contacting OSM's Knoxville Field Office. In addition, you may receive a copy of the submission during regular business hours at the following location: Virginia Department of Mines, Minerals, and Energy, 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219, Telephone: Legal Services Officer (276) 523-8157.

**FOR FURTHER INFORMATION CONTACT:** Earl Bandy, Telephone: (865) 545-4103. e-mail: [ebandy@osmre.gov](mailto:ebandy@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Description of the Submission
- 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 this Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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.