



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

**[SATS No. VA-128-FOR; Docket ID: OSM-2016-0007;
S1D1S SS08011000 SX066A000 201S180110;
S2D2S SS08011000 SX066A000 20XS501520]**

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Virginia regulatory program (the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Virginia Coal Surface Mining Reclamation Regulations (the State regulations). The changes involve adding a provision to Virginia Administrative Code (VAC) to require Virginia to enter permit information into the Federal Applicant Violator System (AVS) and add a provision to the Virginia program to

specify that the final compliance review conducted prior to permit issuance must occur no more than five business days before issuance.

DATES: The effective date is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Field Office Director, Charleston Field Office. Telephone: (304) 347-7158. E-mail: rcalhoun@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

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, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the requirements of this Act and consistent with the Federal regulations. *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, in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning the Virginia program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated April 29, 2016 (Administrative Record No. VA 2033) Virginia sent an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

We announced receipt of the proposed amendment in the March 31, 2017, **Federal Register** (82 FR 16010). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 1, 2017. No public comments were received.

III. OSMRE's Findings

Virginia submitted this program amendment to ensure consistency of Virginia and

Federal regulations with respect to the AVS. The submission included changes to Title 4 of the VAC that includes the entry of permit information into the AVS upon receipt and review of an administratively complete application and to conduct a final compliance review prior to permit issuance no more than five business days before permit issuance. (Administrative Record No. VA 2033).

We are approving the amendment. Our specific findings concerning Virginia's amendment under SMCRA and the Federal regulations at 30 CFR 773.8 and 773.12 and the substantive changes to Virginia's Review of Permit Applications are described below.

4 VAC 25-130-773.15. Review of Permit Applications: Virginia seeks to revise subsection (a)(3) of this regulation, which addresses review of the information submitted under 4 VAC 25-130-778.13 and 4 VAC 25-130-778.14 about the applicant's or operator's permit histories, business structure, and ownership and control relationships. The division must also enter permit information into AVS upon receipt and review of an administratively complete application.

Additionally, in relationship to *4 VAC 25-130-773.15. Review of Permit Applications:* Virginia seeks to revise subsection (e) to provide that the final compliance review of a permit application, required under 4 VAC 25-130-773.15(b)(1), must be conducted no more than five business days before permit issuance under 773.19 of this part.

The amendment to subsection (a)(3) of 4 VAC-25-130-773.15 adds the requirement that all permit information that must be reviewed by the regulatory authority must also be entered into the AVS. The addition of this requirement renders the Virginia

program no less effective than its Federal counterpart at 30 CFR 773.8. Therefore, we approve the amendment to subsection (a)(3).

The addition of the requirement that the final compliance review take place no more than five business days before permit issuance renders subsection (e) of 4 VAC-25-130-773.15 no less effective than its Federal counterpart at 30 CFR 773.12(c). The amendment to subsection (e) is therefore approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and did not receive any.

Federal Agency Comments

On May 9, 2016, pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record No. 2034). No Federal agency comments were received.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or

the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on May 9, 2016, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment. The EPA did not provide any comments.

V. OSMRE's Decision

Based on the above findings, we are approving Virginia's amendment that was submitted on April 29, 2016 (Administrative Record No. VA 2033). To implement this decision, we are amending the Federal regulations, at 30 CFR Part 946, which codify decisions concerning the Virginia program. In accordance with the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253) requires that the State's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency between State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without

just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on the analysis of the corresponding Federal regulations.

Executive Order 12866 – Regulatory Planning and Review and 13563 – Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register** notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency writes its legislation and regulations to

minimize litigation, and that the agency’s legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the Commonwealth of Virginia drafted.

Executive Order 13132 – Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Virginia program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Section 2 and 3 of the Executive Order and with the principles of cooperative federalism, as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). Specifically, pursuant to Section 503(a)(1) and (7)(30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognitions of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Virginia program, which does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211 – Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking 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 a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045 – Protection of Children from Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13405 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d) respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5 (A), state program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act. (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA)(15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A-119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*) is not required.

Regulatory Flexibility Act

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 the corresponding 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 corresponding 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 2019

Thomas D. Shope, Regional Director
North Atlantic - Appalachian Region

For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

Part 946 – VIRGINIA

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

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

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

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
<p>* * * * *</p> <p>April 29, 2016</p>	<p>* *</p> <p>[Insert date of publication in the Federal Register]</p>	<p>Amend the following sections of the Virginia Administrative Code: Section 4 VAC 25-130-773.15 (a) (3). Review of Permit Applications, General; Section 4 VAC 25-130-773.15 (e). Review of Permit Applications, Final compliance review.</p>

[FR Doc. 2019-22946 Filed: 10/22/2019 8:45 am; Publication Date: 10/23/2019]