

initial certification is 3 days on-site and \$ 9,000. Re-certification is required bi-annually at an estimated annual cost of \$3,000.

#### **Executive Order 13132 (Federalism)**

The FHWA analyzed this proposed amendment in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy making discretion of the States and local governments.

#### **Unfunded Mandates Reform Act**

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995; 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532).

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain a collection of information requirement for the purposes of the PRA.

#### **Executive Order 12988 (Civil Justice Reform)**

This proposed action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

#### **Executive Order 13045 (Protection of Children)**

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant proposed action and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This proposed action would not affect a taking of private property or otherwise have taking implications under

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

#### **Executive Order 13211 (Energy Effects)**

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this is not a significant energy action under this order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### **Executive Order 13175 (Tribal Consultation)**

Since none of the existing test laboratories are owned, operated, or in any way controlled by Indian tribes, the FHWA believes that it will not have any direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### **National Environmental Policy Act**

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule uses voluntary consensus standards.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes

the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 637**

Construction inspection and approval; Highways and roads.

Issued on: March 30, 2007.

**J. Richard Capka,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 637, as set forth below:

#### **PART 637—QUALITY ASSURANCE PROCEDURES FOR CONSTRUCTION**

1. The authority citation for part 637 continues to read as follows:

**Authority:** Sec. 1307, Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

2. In § 637.209, add paragraph (a)(5) to read as follows:

#### **§ 637.209 Laboratory and sampling and testing personnel qualifications**

(a) \* \* \*

(5) After [insert date two years after the date of publication of the final rule in the **Federal Register**], laboratories that perform crash testing for acceptance of roadside hardware by the FHWA shall be accredited by a laboratory accreditation body that is recognized by the National Laboratory Accreditation Cooperation (NACLA), is a signatory to the Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement (MRA), is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), or another accreditation body acceptable to FHWA.

\* \* \* \* \*

[FR Doc. E7-6533 Filed 4-6-07; 8:45 am]

BILLING CODE 4910-22-P

#### **DEPARTMENT OF THE INTERIOR**

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

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

[VA-123-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 amendment.

**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). Virginia is proposing to revise its remining regulations to make three provisions permanent by deleting a termination date of September 30, 2004, from the regulations. The amendments are intended to render the State's regulations consistent with recent amendments to SMCRA.

**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-123-FOR, by any of the following methods:

- *E-mail:* [tdieringer@osmre.gov](mailto:tdieringer@osmre.gov). Include VA-123-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-1058), 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 revises Virginia Coal Surface Mining Reclamation Regulations to reflect the deletion from SMCRA at section 510(e) of the termination date of section 510(e) of September 30, 2004.

Section 510 of SMCRA concerns permit approval or denial. Subsection 510(e) provides an exception to the prohibition of subsection (c), which prohibits the issuance of a permit where any surface coal mining operation owned or controlled by an applicant is currently in violation of SMCRA or such

other laws referenced at subsection 510(c). Prior to being amended by the Tax Relief and Health Care Act of 2006, subsection 510(e) provided as follows:

(e) After the date of enactment of this subsection, the prohibition of subsection (c) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term "violation" has the same meaning as such term has under subsection (c). The authority of this subsection and section 515(b)(20)(B) shall terminate on September 30, 2004.

The effect of the deletion of the termination date in the quoted paragraph above (the entire last sentence was deleted) is twofold: (1) To make permanent the authority at subsection 510(e) of SMCRA to approve a permit application for surface coal mining and reclamation notwithstanding the existence of a violation resulting from an unanticipated event or condition at the site, and (2) to make permanent the two-year revegetation responsibility period for lands eligible for remining at subsection 515(b)(20)(B) of SMCRA.

In the proposed program amendments identified below, Virginia is deleting the termination date of September 30, 2004, from three of its program regulations concerning remining.

*1. 4 VAC 25-130-785.25. Lands eligible for remining*

This provision is proposed to be amended by deleting subsection (c) in its entirety. Currently, 4 VAC 25-130-785.25 provides as follows:

(a) This section contains permitting requirements to implement 4VAC25-130-773.15(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall:

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred in subdivision (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of this chapter can be met.

(c) The requirements of this section shall not apply after September 30, 2004.

In its submittal letter, the DMME stated that the deletion of subsection (c) containing the termination date of September 30, 2004, is intended to reflect the deletion of that same termination date at subsection 510(e) of SMCRA.

*2. 4VAC25-130-816.116 and 817.116. Revegetation; Standards for Success*

These provisions are proposed to be amended by deleting the phrase "included in permits issued before September 30, 2004, or any renewals thereof" at the end of the first sentence in subparts (c)(2)(ii). Currently, 4 VAC 25-130-816.116(c) and 817.116(c) provide as follows:

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than:

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for re-mining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

In its submittal letter, the DMME stated that the deletion of the September 30, 2004, termination date at subparts (c)(2)(ii) is intended to reflect the

deletion of that same termination date at subsection 510(e) of SMCRA.

As amended, 4VAC25-130-816.116(c)(2)(ii) and 817.116(c)(2)(ii) provide as follows:

(ii) Two full years for lands eligible for re-mining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

### 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-123-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. E7-6577 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.