

a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*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 a portion of the State provisions are 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. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*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 a portion of 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. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature

and are not expected to have a substantive effect on the regulated industry.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 27, 2007.

**William Joseph,**

*Acting Regional Director, Mid-Continent Regional Office.*

■ For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

**PART 914—INDIANA**

■ 1. The authority citation for part 914 continues to read as follows:

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

■ 2. Section 914.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 914.15 Approval of Indiana regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	October 18, 2007	312 IAC 25–1–57; 25–4–87; 25–5–16(a), (b) [new], and (c) [formerly (b)]; 25–6–20; 25–6–66; and 25–7–1.

**§ 914.16 [Amended]**

■ 3. Section 914.16 is amended by removing paragraph (ff) and removing reserved paragraphs (gg) through (mm).

[FR Doc. 07–5144 Filed 10–17–07; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

[VA–125–FOR]

**Virginia Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an 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 review of a decision not to inspect or enforce. The amendment is intended to specify the time limit for filing a request for review of a decision and to identify with whom a request for review should be filed.

**DATES:** *Effective Date:* October 18, 2007.

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

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Virginia Program
- II. Submission of the Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. 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. Submission of the Amendment

By letter dated March 12, 2007 (Administrative Record Number VA-1063), 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 the Virginia Coal Surface Mining Reclamation Regulations to be consistent with the time limits to request formal administrative review of agency decisions under the Virginia Act and regulations. The amendment also identifies the person with whom the request for review should be filed.

We announced receipt of the proposed amendment in the May 9, 2007, **Federal Register** (72 FR 26329). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 8, 2007.

## III. OSM's Findings

### 4 VAC 25-130-842.15(d). Review of Decision Not To Inspect or Enforce

This provision is amended at subsection (d) by adding the phrase "within 30 days of the Division's determination" to clarify the time limit within which a person may request a formal hearing to review a decision not to inspect or enforce. Subsection (d) is also amended to specify that all requests for hearings and appeals for review and reconsideration be filed with the Director, Division of Mined Land Reclamation.

As amended, 4 VAC 25-130-842.15(d) provides as follows:

Any person who requested a review of a decision not to inspect or enforce under this section and who is or may be adversely affected by any determination made under Subsection (b) of this section may request review of that determination by filing within 30 days of the Division's determination an application for formal review and request for hearing under the Virginia Administrative Process Act, § 2.2-4000 et seq. of the Code of Virginia. All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

In its submittal letter, the DMME stated that the 30-day time limit for requesting formal review was proposed in order to make this regulation consistent with the time limits to request formal administrative review of agency

decisions under the Virginia Act and regulations.

The Federal regulations at 30 CFR 840.15 require that each State program "provide for public participation in enforcement of the State program consistent with that provided by 30 CFR parts 842, 843 and 845 and 43 CFR part 4."

The counterpart Federal regulation pertaining to appeals of informal review decisions is at 30 CFR 842.15(d), which provides as follows:

Any determination made under paragraph (b) of this section [pertaining to requests for informal review] shall constitute a decision of OSM within the meaning of 43 CFR 4.1281 and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR part 4.

The Federal regulations promulgated by the Office of Hearings and Appeals, and applicable to formal appeals of OSM's decisions on informal review, are at 43 CFR 4.1280-4.1286. The time allowed for requesting formal review is set forth in 43 CFR 4.1282(b), which states that:

The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.

(Emphasis added.)

With respect to anyone requesting formal review, but who was not served with the informal review decision, the Federal regulation and the proposed Virginia amendment are identical in providing a 30-day appeal period that runs from the date of the determination. However, the Federal and State provisions differ with respect to appeal times for persons who are served with the informal review decision. While the State amendment provides a 30-day appeal period commencing with the date of the informal review determination, the Federal regulation allows only a 20-day appeal period, but that period commences with the person's receipt of the decision. Even though Virginia would allow ten additional days to appeal, we were concerned that a person's appeal period could nearly expire before he or she receives the decision, which must only be sent to the appellant within 30 days of the informal review request, 4 VAC 25-130-842.15(b). To address that concern, the DMME submitted a document from its Procedures Manual. The document, entitled "Mailing-Administrative Decisions", was issued on September 10, 2007, and states, in pertinent part, as follows:

A decision that is subject to administrative or judicial review under the Virginia Coal

Surface Mining Control and Reclamation Act of 1979, as amended, or the Virginia Administrative Process Act shall be either hand delivered or sent by certified mail to the person it is directed to or to his designated agent.

A decision sent by certified mail shall be mailed on the date of the decision, but no later than 2 working days from the decision date.

If the DMME adheres to the policy quoted above, a person wishing to formally appeal an informal review decision should have at least 25 days to file his appeal after receipt of the decision, assuming the decision is mailed two days after its issuance, and assuming delivery occurs no later than 3 days after mailing. With the understanding that the DMME will apply this policy to informal review decisions, and that the DMME will serve all informal review decisions via certified mail, we find that the amendment to 4 VAC 25-130-842.15(d) is no less effective than the Federal regulations at 30 CFR 842.15(d) and 43 CFR 4.1282(b). The remainder of the amendment, pertaining to the identification of the entity with whom a request for review should be filed, is no less effective than the aforementioned Federal regulations. The amendment is, therefore, approved.

## IV. Summary and Disposition of Comments

### Public Comments

We asked for public comments on the amendment (Administrative Record Number VA-1068) and no comments were received.

### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on March 16, 2007, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record Number VA-1060). The United States Department of the Interior, Bureau of Land Management responded and stated that they found no inconsistencies with the proposed changes and the Federal Laws, which govern mining (Administrative Record No. 1067). The United States Department of Agriculture, Natural Resources Conservation Service responded and stated that they did not object to the amendment and deemed the changes appropriate.

### Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written 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 pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(II)(i), we requested comments on the amendment from the EPA (Administrative Record number VA-1064). No comments were received.

## V. OSM's Decision

Based on the above findings, we are approving the amendment sent to us by Virginia on March 12, 2007. To implement this decision, we are amending the Federal regulations at 30 CFR part 946, which codify decisions concerning the Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

### *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 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 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 a portion of the provisions in 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.*) because they are 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. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations 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.*). This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

### *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 a portion of the State provisions are 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. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

*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 a portion of 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. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 27, 2007.

**H. Vann Weaver,**

*Acting Regional Director, 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
March 12, 2007	October 18, 2007	4 VAC 25–130–842.15(d), Review of decision not to inspect or enforce.

[FR Doc. E7–20559 Filed 10–17–07; 8:45 am]  
 BILLING CODE 4310–05–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD01–07–148]

**Drawbridge Operation Regulations; Taunton River, Fall River and Somerset, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the old Brightman Street bascule bridge across the Taunton River at mile 1.8, between Fall River and Somerset, Massachusetts. Under this temporary deviation, in effect from 6 a.m. on October 13, 2007 through 5 p.m. on October 27, 2007, the bridge shall open on signal after a one-hour advance notice is given by calling the number posted at the bridge. This deviation is necessary to facilitate scheduled bridge maintenance.

**DATES:** This deviation is effective from 6 a.m. on October 13, 2007 through 5 p.m. on October 27, 2007.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

**SUPPLEMENTARY INFORMATION:** The old Brightman Street bascule bridge, across the Taunton River at mile 1.8, between Fall River and Somerset, Massachusetts, has a vertical clearance in the closed position of 27 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.619.

The owner of the bridge, Massachusetts Highway Department (MHD), requested a temporary deviation to facilitate scheduled bridge maintenance and structural repairs to the sidewalks at the old Brightman Street bascule bridge.

Under this temporary deviation, in effect from 6 a.m. on October 13, 2007 through 5 p.m. on October 27, 2007, the old Brightman Street bascule bridge shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

This work was scheduled during the time of year when the one upstream facility is closed and no deliveries are scheduled. The recreational boat marinas were contacted and have no objection to the one-hour advance notice.

An 18' x 43' construction work barge may be located in the channel during the prosecution of this bridge maintenance. The work barge will move upon request by calling the bridge tender either on the land line (508) 672–5111 or on VHF channels 13 and 16.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of