

### 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.*

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## 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.

## II. Description of the Submission

By letter dated June 11, 2008, the Virginia Department of Mines, Minerals, and Energy (DMME) sent us an informal proposed amendment to its program for a pre-submission review (VA-126-INF). We reviewed the pre-submission and responded to the DMME, with comments, via electronic mail on July 2, 2008. By letter dated July 17, 2008, the DMME formally submitted the proposed amendments to its program (Administrative Record No. VA-1089). We announced receipt of the amendment in the August 29, 2008, **Federal Register** (73 FR 50915).

OSM's review of the July 17, 2008, submittal identified several issues that we presented to the DMME. The first discussion occurred by telephone on September 4, 2008. As a result of that discussion the DMME submitted on the same date via electronic mail Memorandum #13-86 which specifies application processing time limits for new permits and revision applications (Administrative Record No. VA-1093). The complete text of the Memorandum can be found at <http://www.dmme.virginia.gov/DMLR/docs/operatormemos>.

A subsequent meeting was held on October 16, 2008 (Administrative Record No. VA-1099). In an electronic mail message dated October 29, 2008 (Administrative Record No. VA-2000), the DMME provided its position in response to OSM's comments and agreed to expeditiously submit additional changes. On November 3, 2008, the DMME responded by submitting regulation changes via electronic mail (Administrative Record No. VA-2001). OSM provided additional comments on the regulation changes on November 13, 2008 (Administrative Record No. VA-2002), and the DMME responded to these comments on November 20, 2008, by electronic mail (Administrative Record No. VA-2003). The DMME proposes the following changes:

### 1. 4VAC25-130-700.5 Definitions.

The corresponding Federal regulation for this section is 30 CFR 761.5. The DMME proposes to modify the definition of *Valid Existing Rights* (VER). As proposed, the definition will read as follows (revised text in italics):

*"Valid existing rights"* means a set of circumstances under which a person may, subject to Division approval, conduct surface coal mining operations on lands where Section 45.1-252 D of the Act and Section 4VAC25-130-761.11 of the regulations would otherwise prohibit such operations. The possession of valid existing rights only

confers an exception from the prohibitions of Sections 45.1-252 D and 4VAC25-130-761.11. A person seeking to exercise valid existing rights *must comply with all pertinent requirements of the Act and the regulations promulgated thereunder*, and would need:

(a) Except as provided in *subsection (c)* of this definition, a demonstration of the legally binding conveyance, lease, deed, contract, or other document which vests the person, or predecessor in interest, with the right to conduct the type of surface coal mining operations intended. The right must exist at the time the land came under the protection of Sections 4VAC25-130-761.11 and 45.1-252 D.

2. 4VAC25-130-761.11 *Areas where mining is prohibited or limited;*  
4VAC25-130-761.12 *Exception for existing operations;* 4VAC25-130-761.16 *Submission and processing of requests for valid existing rights determinations;* 4VAC25-130-772.12 *Permit requirements for exploration removing more than 250 tons of coal.*

The corresponding Federal regulations for the following sections are 30 CFR 761.11, 761.12, 761.16, and 772.12. The DMME proposes to add new sections 4VAC25-130-761.12, and 4VAC25-130-761.16 and revise 4VAC25-130-761.11 and 4VAC25-130-772.12 to read as follows:

(a) 4VAC25-130-761.11. *Areas where mining is prohibited or limited.*

(Revised) Delete Paragraph (h) which reads as follows: There will be no surface coal mining, permitting, licensing, or exploration of Federal Lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(b) 4VAC25-130-761.12 *Exception for existing operations.* (New) The prohibitions and limitations of 4VAC25-130-761.11 do not apply to surface coal mining operations for which a valid permit, issued under Subchapter VG of this chapter, exists when the land comes under the protection of 4VAC25-130-761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of 4VAC25-130-761.11.

(c) 4VAC25-130-761.16 *Submission and processing of requests for valid existing rights determinations.* (New)

(a) Basic framework for valid existing rights determinations. The table of 30 CFR 761.16(a) identifies the agency

responsible for making a valid existing rights determination and the definition that it must use, based upon which subsection of 30 CFR 761.11 or 4VAC25-130-761.11 applies and whether the request includes federal lands.

(b) A request for a valid existing rights determination must be submitted to the Division, if a person intends to conduct surface coal mining operations on the basis of valid existing rights under 4VAC25-130-761.11 or wishes to confirm the right to do so. The request may be submitted before the person prepares and submits an application for a permit or boundary revision for the land.

(1) The person must provide a property rights demonstration under the definition of valid existing rights if the request relies upon the "good faith/all permits" or the "needed for and adjacent" standard set forth in the valid existing rights definition in 4VAC25-130-700.5. For the land subject to the request, the demonstration must include:

(i) A legal description of the land.

(ii) Complete documentation of the character and extent of the person's current interests in the surface and mineral estates of the land.

(iii) A complete chain of title for the surface and mineral estates of the land.

(iv) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.

(v) A description of the type and extent of surface coal mining operations that the person claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Virginia property law.

(vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252, of all property rights for the surface and mineral estates.

(vii) Names and addresses of the current owners of the surface and mineral estates of the land.

(viii) If the coal interests have been severed from other property interests, documentation that the person has notified and provided reasonable opportunity for the owners of other property interests in the land to comment on the validity of the person's property rights claims.

(ix) Any comments that the person receives in response to the notification provided under subdivision (b)(1)(viii).

(2) If the request relies upon the good faith/all permits standard in subdivision (b)(1) of the valid existing rights definition in 4VAC25-130-700.5, in addition to the information provided by subdivision (b)(1) of this section, the person must also submit the information about permits, licenses, and authorizations for surface coal mining operations on the land subject to the request that the person or predecessor in interest obtained, submitted, or made:

(i) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations obtained before the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252.

(ii) Application dates and identification numbers for any permits, licenses, and authorizations submitted before the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252.

(iii) An explanation of any other good faith effort made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252.

(3) If the request relies upon the needed for and adjacent standard in subdivision (b)(2) of the valid existing rights definition in 4VAC25-130-700.5, in addition to the information provided by subdivision (b)(1) of this section, the person must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252.

(4) If the request relies upon one of the standards for roads in subdivisions (c)(1-3) of the valid existing rights definition in 4VAC25-130-700.5, the person must submit satisfactory documentation that:

(i) The road existed when the land upon which it is located came under the protection of 4VAC25-130-761.11 or Section 45.1-252, and the person has a legal right to use the road for surface coal mining operations;

(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252, and, under the document creating the right of way or easement, and under any subsequent

conveyances, the person has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252.

(c) Initial review of request. The Division must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection (b). The review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(2) If the request does not include all applicable components of the submission requirements of subsection (b), the Division must notify the person and establish a reasonable time for submission of the missing information. Should the person not provide the information requested by the Division under this subdivision, within the time specified or as subsequently extended, the Division must issue a determination under subdivision (e)(4) that the person has not demonstrated valid existing rights.

(3) When the request includes all applicable components of the submission requirements of subsection (b), the Division must implement the notice and comment requirements of subsection (d).

(d)(1) When the division determines that the request satisfies the completeness requirements of subsection (c), it shall publish a notice in a newspaper of general circulation in the county in which the land is located inviting public comment on the merits of the request. OSMRE will publish a similar notice in the **Federal Register** if the request involves Federal lands within an area listed in 4VAC25-130-761.11(a) or (b). The public notice must include:

(i) The location of the land to which the request pertains.

(ii) A description of the type of surface coal mining operations planned.

(iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in 4VAC25-130-700.5.

(A) If the request relies upon the "good faith/all permits" or the "needed for and adjacent" standard set forth in the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the property rights that the person claims and the basis for the claim.

(B) If the request relies upon the road standard set forth in subdivision (c)(1) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that the road existed when the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252. In addition, the notice must include a description of the basis for the claim that the person has a legal right to use that road for surface coal mining operations.

(C) If the request relies upon the standard in subdivision (c)(2) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of 4VAC25-130-761.11 or Section 45.1-252. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

(iv) If the request relies upon one or more of the standards in subdivisions (b) and (c)(1 and 2) and (c)(2) of the valid existing rights definition in 4VAC25-130-700.5, a statement that the Division will not make a decision on the merits of the request if, by the close of the comment period under the notice or the notice required by subdivision (d)(3), a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the valid existing rights claim.

(v) A description of the procedures the division will follow in processing the request.

(vi) The closing date of the public comment period, which shall be a minimum of 30 days after the notice's publication date.

(vii) A statement that interested persons may request, in writing, from the Division a 30 day extension of the public comment period. The extension request shall set forth with reasonable specificity, the reasons the commenter needs the additional time to submit comments.

(viii) Include the Division office's address where a copy of the valid existing rights request is available for public inspection and to where comments and requests for extension of the comment period should be sent.

(2) The Division must promptly provide a copy of the notice required under subdivision (d)(1) to:

(i) All reasonably locatable owners of surface and mineral estates in the land included in the valid existing rights request.

(ii) The owner of the feature causing the land to come under the protection of 4VAC25–130–761.11, and, when applicable, the agency(ies) with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 4VAC25–130–761.11.

(3) The notice required under subdivision (d)(2) must provide a 30 day comment period, and specify that another 30 days may be granted for good cause shown at the discretion of the Division or agency responsible for the valid existing rights determination.

(e)(1) The division or agency responsible for making the valid existing rights determination must review the materials submitted under subsection (b), comments received under subsection (d), and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the division must notify the person in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the division deems necessary to remedy the inadequacy.

(2) Once the record is complete and adequate, the Division must determine whether you have demonstrated valid existing rights. The Division's decision must explain how the person has or has not satisfied all applicable elements of the valid existing rights definition under 4VAC25–130–700.5, contain findings of fact and conclusions, and specify the reasons for the conclusions.

(3) When the request relies upon one or more of the standards in subdivisions (b) and (c)(1 and 2) of the valid existing rights definition in 4VAC25–130–700.5, the Division:

(i) Must issue a determination that the person has not demonstrated valid existing rights if the property rights claim is the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The division will make the determination without prejudice, meaning that the person may refile the request once the property rights dispute is finally adjudicated. This applies only to situations in which legal action has been initiated as of the closing date of

the comment period under subdivisions (d)(1) or (d)(3).

(ii) If the record indicates disagreement as to the accuracy of the person's property rights claim, but the disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, must evaluate the merits of the information in the record and determine whether the person has demonstrated that the requisite property rights exist under subdivision (a), (c)(1), or (c)(2) of the valid existing rights definition in 4VAC25–130–700.5, as appropriate. The Division must then proceed with the decision process under subdivision (e)(2) of this section.

(4) The Division must issue a determination that the person has not demonstrated valid existing rights if the person does not submit information that the division requests under subdivision (c)(2) or (e)(1) of this section within the time specified or as subsequently extended. The Division will make the determination without prejudice, meaning the person may refile a revised request at any time.

(5) After making a valid existing rights determination, the Division shall:

(i) Provide the person a copy of the determination with an explanation of appeal rights and procedures to the person seeking the determination, owner or owners of the land to which the determination applies, owner of the feature causing the land to come under the protection of 4VAC25–130–761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25–130–761.11.

(ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. OSMRE will publish the determination, together with an explanation of appeal rights and procedures, in the **Federal Register** if the request includes Federal lands within an area listed in 4VAC25–130–761.11(a) or (b).

(f) The division's valid existing rights determination shall be subject to administrative and judicial review under 4VAC25–130–775.11 and 4VAC25–130–775.13.

(g) The division must make a copy of the valid existing rights determination request available to the public as provided by 4VAC25–130–773.13(d), and the records associated with that request, and any subsequent determination under subsection (e) of this section, available to the public in accordance with 4VAC25–130–840.14.

(d) 4VAC25–130–772.12. *Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.*

(Revised by adding paragraphs (b)(14) and (d)(2)(iv))

(b) Application Information. Each application for an exploration permit shall contain, at a minimum, the following information:

(14) For any lands listed in 4VAC25–130–761.11, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 4VAC25–130–761.11, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25–130–761.11.

(d) Decisions on applications for exploration.

(2) The Division shall approve a complete and accurate application for a coal exploration permit filed in accordance with this Part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will:

(iv) With respect to exploration activities on any lands protected under 4VAC25–130–761.11, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 4VAC25–130–761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25–130–761.11, to comment on whether the finding is appropriate.

3. 4VAC25–130–773.21 *Improvidently issued permits; rescission procedures.*

The corresponding Federal regulation is 30 CFR 773.23(c)(2). At subsection (b), the DMME proposes to require that the division shall post notice of a permit suspension or rescission at its offices and on its internet home page. At subsection (e), the DMME proposes to require that if a permittee files an appeal

for administrative review of the notice or decision under subsection (c) under § 4VAC25-130-775.11 and § 2.2-4000 *et seq.* of the Code of Virginia, the notice of the public hearing scheduled under this subsection will be posted at the division office located nearest to the permit.

**4. 4VAC25-130-773.13 Public participation in permit processing.**

The corresponding Federal regulation is 30 CFR 773.6. The DMME proposes to change “paragraph” to “subsection” in section (b)(1).

**5. 4VAC25-130-774.12 Post-permit issuance requirements.**

The corresponding Federal regulation for this section is 30 CFR 774.11. The DMME proposes to change “paragraph” to “subsection” in section (e).

**6. 4VAC25-130-774.17 Transfer, assignment, or sale of permit rights.**

The corresponding Federal regulation for this section is 30 CFR 774.17. The DMME proposes to change “paragraph” to “subsection” in section (a).

**7. 4VAC130-778.13 Identification of interests.**

The corresponding Federal regulation for this section is 30 CFR 778.11. The DMME proposes to change “paragraph(s)” to “subsection(s)” in sections (c), (d), (k), and (m).

**8. 4VAC25-130-801.13 Self-bonding.**

There is no direct Federal counterpart regulation for this section. The DMME proposes to change “paragraph” to “subdivision” in sections (a)(3), (a)(7), and (b).

**9. 4VAC25-130-840.14 Availability of records.**

The corresponding Federal regulation is 30 CFR 840.14(c). The DMME proposes to post a notice that states in part: Pursuant to § 2.1-340 *et seq.* of the Code of Virginia, as amended, and §§ 4 VAC 25-130-700.14, 4 VAC 25-130-702.13, 4 VAC 25-130-772.15, 4 VAC 25-130-773.13(d), and 4 VAC 25-130-840.14 (b) of the Virginia Coal Surface Mining Reclamation Regulations, the Division of Mined Land Reclamation (DMLR) will make available copies of all records, reports, inspection materials, permit applications, or information obtained by the Division for public inspection and copying. The Division will maintain the information at its principal office located in Big Stone Gap, Virginia. The information will also be made available upon request at the Division’s Lebanon office. The DMLR may, upon request, provide the

information at other Federal, State, or local government office(s) located in the county where the mining is or may be proposed to occur, or provide the information electronically to the requestor. If a person wishes to inspect the information, he or she may visit or call one of DMLR’s offices, or send an electronic request. Information regarding laws, regulations, public participation, complaints, guidance documents, procedures to request information, and other topics may be obtained from the DMLR’s office or accessed through the DMLR’s internet site. This notice will be sent to Circuit Court Clerks of coal-producing counties (Lee, Wise, Scott, Dickenson, Russell, Tazewell, Buchanan); posted at DMLR offices; and placed on the DMME webpage.

**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 the amendment, it will become part of the Virginia program.

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, 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.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 22, 2009.

**Thomas D. Shope,**  
*Regional Director.*

**Editorial Note:** This document was received in the Office of the Federal Register on Tuesday, April 14, 2009.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2009-0181; FRL-8892-9]

**Approval and Promulgation of Implementation Plans; Georgia; Enhanced Inspection and Maintenance Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Georgia Department of Natural Resources through the Georgia Environmental Protection Division on February 13, 2009. The revisions include minor changes to Georgia’s Air Quality Rules found at Chapter 391-3-20-.17, pertaining to rules for Enhanced Inspection and Maintenance. Specifically, the changes update the amount of repair costs that may qualify for a waiver. This action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register**, EPA is approving the State’s SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period of this proposal. Any parties interested in commenting on this proposal should do so at this time.

**DATES:** Written comments must be received on or before May 18, 2009.