

### 1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

### 2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program (administrative record No. UT-1082). None of the Federal agencies responded.

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

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT-1082). It did not respond to OSM's request.

### 4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT-1082). Neither SHPO nor ACHP responded to OSM's request.

### V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on November 30 and December 4, 1995, and March 11, 1996.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645-100-500, concerning petitions to initiate rulemaking; and finding No. 2, Utah Admin. R. 645-301-553.110 and .120, concerning backfilling and grading and highwall retention.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

### VI. Procedural Determinations

#### 1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### 2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

#### 4. 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.*).

#### 5. Regulatory Flexibility Act

The Department of the Interior has determined 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 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. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. 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.

#### 6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 21, 1996.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

### PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

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

2. Section 944.15 is amended by adding paragraph (hh) to read as follows:

#### § 944.15 Approval of amendments to the State regulatory program.

\* \* \* \* \*

(hh) Revisions to Utah Admin. R. 645-100-500, concerning petitions to initiate rulemaking, and revisions to Utah Admin. R. 645-301-553.110 and Utah Admin. R. 534-301-553.120, concerning backfilling and grading and highwall retention, as submitted to OSM on November 30 and December 4, 1995, and March 11, 1996, are approved effective September 4, 1996.

#### § 944.16 [Amended]

3. Section 944.16 is amended by removing and reserving paragraphs (c) and (d).

[FR Doc. 96-22524 Filed 9-3-96; 8:45 am]

BILLING CODE 4310-05-M

### 30 CFR Part 946

[VA-108-FOR]

#### Virginia Regulatory Program

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Virginia regulatory program (hereinafter referred to as the "Virginia program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of regulatory changes to implement the re-mining standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal regulations as amended on November 27, 1995. (60 FR 58480)

**EFFECTIVE DATE:** September 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Penn, Director, Big Stone Gap Field Office, 1941 Neely Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219 Telephone: (540) 523-4303

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Virginia Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations.

**I. Background on the Virginia Program**

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61088). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

**II. Submission of the Proposed Amendment**

By letter dated May 28, 1996, (Administrative Record No. VA-885) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia submitted the proposed amendment at its own initiative. Virginia proposed amendments to implement the re-mining standards of the Federal Energy Policy Act of 1992.

OSM announced receipt of the proposed amendment in the June 19, 1996, Federal Register (61 FR 31071) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 19, 1996.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

**A. Revisions to Virginia Regulations That Are Substantively Identical to the Corresponding Federal Regulations**

The amendments proposed by Virginia are as follows:

**1. Section 480-03-19.700.5 Definitions**

(a) "Lands eligible for re-mining" has been added to mean those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Federal Act.

(b) "Unanticipated event or condition" has been added to mean (as used in § 480-03-19.773.15), an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for re-mining and was not contemplated by the applicable permit.

**2. Section 480-03-19.773.15 Review of Permit Applications**

(a) New subsection (b)(4) has been added to provide, at (b)(4)(i) that subsequent to October 24, 1992, the prohibitions of paragraph (b) of this section regarding issuance of a new permit shall not apply to any violation that: occurs after that date; is unabated; and results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for re-mining under a permit which is issued before September 30, 2004, or any renewals thereof, and held by the person making applications for the new permit.

New subsection (b)(4)(ii) provides that for permits issued under § 480-03-19.785.25 of this chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it: arose after permit issuance; was related to prior mining; and was not identified in the permit.

(b) New subsection (c)(14) has been added to provide that for permits to be issued under § 480-03-19.785.25 of this chapter, the permit application must contain: lands eligible for re-mining; an identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur

at the site; and mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of this chapter can be accomplished.

**3. Section 480-03-19.785.25 Lands Eligible for Remining**

This new section contains permitting requirements to implement § 480-03-19.773.15(b)(4), and provides that: any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remaining must comply with this section; 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: 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; with regard to potential environmental and safety problems referred to in paragraph (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; The requirements of this section shall not apply after September 30, 2004.

**4. Section 480-03-19.816/817.116 Revegetation: Standards for Success**

Subsections (c)(2)(i) have been amended by adding the phrase "except as provided in paragraph (c)(2)(ii) of this section" to the first sentence. This modification was made in response to the new language added at subsection (c)(2)(ii), and that is identified below.

New subsection (c)(2)(ii) provide that the responsibility period shall be 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 paragraph (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.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulation, the Director finds that Virginia's proposed rules are no less effective than the Federal rule.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Agriculture, Natural Resources Conservation Service responded and recommended that the amendments be accepted. The U.S. Fish and Wildlife Service responded and stated that the proposed regulatory changes are not likely to adversely affect threatened or endangered species or critical habitats. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendments should be accepted.

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA on May 31, 1996. EPA responded that the amendment was acceptable.

##### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. They did not respond.

#### V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Virginia on May 28, 1996.

The Federal regulations at 30 CFR Part 946, codifying decisions concerning the Virginia program, are being amended to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988*

The Department of the Interior has concluded the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a special State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 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.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since 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 has determined 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

##### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 1996.

Tim L. Dieringer,

*Acting Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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 by adding paragraph (l) to read as follows:

##### **§ 946.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(l) The amendment to the Virginia program concerning implementation of the remaining standards of the Federal Energy Policy Act of 1992 as submitted to OSM on May 28, 1996, is approved effective September 4, 1996.

[FR Doc. 96-22448 Filed 9-3-96; 8:45 am]

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#### **National Park Service**

#### **36 CFR Parts 1 and 15**

**RIN 1024-AC50**

#### **Use of Environment and Human Figure and Design Symbol**

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is adopting this final rule to