

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 946**

[VA-116-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.

SUMMARY: OSM is announcing it received 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 the following: a statutory change to the Virginia Act at section 45.1-235 C as enacted in the 1999 session of the Virginia General Assembly; proposed regulation changes at section 4 VAC 25-130-700.5 to the definitions of "government financed construction" and "qualified laboratory;" and proposed regulation changes to section 4 VAC 25-130 Part 795 concerning the small operator assistance program (SOAP). The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal provisions.

DATES: Your written comments must be received by 4:00 p.m., on September 20, 1999. If you request a public hearing on the proposed amendment, it will be held on September 14, 1999. If you request to speak at the hearing, your request must be received by 4:00 p.m., on September 7, 1999.

ADDRESSES: Your written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments that we receive in response to this document will be available for your review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each person may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement:
Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116,

Big Stone Gap, Virginia 24219,
Telephone: (703) 523-4303.

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219,
Telephone: (703) 523-8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:**I. Background on the Virginia Program**

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085-61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. VA-978), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. This amendment is the State's response to changes made to the Federal SOAP regulations at 30 CFR Part 795, and to the Federal definition of "government-financed construction" at 30 CFR 707.5.

The proposed amendment consists of the following: a statutory change to the Virginia Act at section 45.1-235 C as enacted in the 1999 session of the Virginia General Assembly; proposed regulation changes at section 4 VAC 25-130-700.5 concerning the definitions of "government financed construction" and "qualified laboratory;" and proposed regulation changes to section 4 VAC 25-130 Part 795 concerning the SOAP program. The amendments are described below.

Statute

Section 45.1-235 of the Code of Virginia. Subsection 45.1-235 C, concerning SOAP, is amended by deleting the existing language and adding in its place the following language.

To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in Section 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

Regulations**1. 4 VAC 25-130-700.5 Definitions**

The definition of "government-financed construction" is amended to provide for less than 50 percent government funding. As amended, "government financed construction" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

The definition of "qualified laboratory" is amended to add the phrase "or other services as specified at 4 VAC 25-130-795.9." With this addition, "qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4 VAC 25-130-795.9 under the SOAP program and which meets the standards of 4 VAC 25-130-795.10.

2. 4 VAC 25-130-795.1 Scope and Purpose

This provision is amended by deleting the words "program administrator" and replacing those words with the word "Division."

3. 4 VAC 25-130-795.6 Eligibility for Assistance

This provision is amended at subdivision 795.6(a)(2) by changing the qualifying annual tonnage limit from 100,000 tons to 300,000 tons. In addition, at subdivisions 795.6(a)(2)(i) and (ii), the pro rata share is increased from 5 percent to 10 percent.

4. 4 VAC 25-130-795.7 Filing for Assistance

This provision is amended at subdivision 795.7(e) by deleting subdivisions 795.7(e)(2) and (5), and renumbering the remaining provisions. Deleted subdivision 795.7(e)(2) required the names of property owners in the affected and adjacent areas. Deleted subdivision 795.7(e)(5) required the location of existing structures and developed water resources within the affected and adjacent areas.

5. 4 VAC 25-130-795.8 Application Approval and Notice

The sole sentence of this provision is deleted and replaced with the following. New subdivision 795.8(a) provides that if the Division finds the applicant eligible, the Division shall inform the applicant in writing that the application is approved. New subdivision 795.8(b) provides that if the Division finds the applicant ineligible, the Division shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

6. 4 VAC 25-130-795.9 Program Services and Data Requirements.

In addition to non-substantive changes, the following changes are made to this provision. At subdivision 795.9(a), the phrase "and provide other services" is added. With this change, a "qualified laboratory" may be paid for other services in addition to the determination and statement referenced in subdivision 795.9(b).

At subdivision 795.9(b)(1), the phrase "including the engineering analysis and designs necessary for the determination" is added. Also, the citation "4 VAC 25-130-784.14(g)" is changed to ". . . 784.14(e)."

At subdivision 795.9(b)(2), the words "drilling and" are added immediately following the first word of the sentence.

New subdivisions 795.9(b)(3), (4), (5), and (6) are added. New 795.9(b)(3), provides for the development of cross-section maps and plans required by 4 VAC 25-130-779.25 and 783.25. New 795.9(b)(4) provides for the collection of archaeological and historic information and related plans required by 4 VAC 25-130-779.12(b), 783.12(b), 780.31, 784.17, and any other archaeological and historic information required by the Director. New 795.9(b)(5) provides for pre blast surveys required by 4 VAC 25-130-780.13. New 795.9(b)(6) provides for the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 4 VAC 25-130-780.16 and 784.21, and information and plans for any other environmental values required by the Division under the Act.

7. 4 VAC 25-130-795.10 Qualified Laboratories

Subdivision 4 VAC 25-130-795.10(a)(5) is amended by adding language which provides that other appropriate methods or guidelines for data acquisition may be approved by the Division. Subdivision 795.10(b) is amended to provide that subcontractors may be used to provide some of the

required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division. Prior to this amendment, subdivision 795.10(b) provided that subcontractors had to meet all applicable requirements for area of specialization pursuant to the program and this section. Subdivisions 795.10(c) and (d) are deleted. Subdivision 795.10(c) concerned the qualification of out-of-state firms. Subdivision 795.10(d) provided that review and approval of all laboratory qualifications would be made every 12 months.

8. 4 VAC 25-130-795.12 Applicant Liability

In subdivision 4 VAC 25-130-795.12(a), the term "applicant" is deleted and replaced by the phrase "coal operator who has received assistance pursuant to 4 VAC 25-130-795.9." Also, the phrase "laboratory services performed pursuant to this Part" is changed to read "services rendered."

Subdivision 795.12(a)(2) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that the tonnage will be determined during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Prior to this change, the tonnage was determined during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter.

Subdivision 795.12(a)(3) is amended to change the 100,000 ton limit to 300,000 tons. This provision is also amended to provide that if the mining rights granted under the permit are sold, transferred or assigned to another person, the tonnage will be determined during the 12 months immediately following the date on which the permit was originally issued. Prior to this change, the tonnage was determined during any 12-month period of the remaining term of the permit.

Subdivisions 4 VAC 25-130-795.12(b) and (c) are deleted. Subdivision 795.12(b) concerned the submission of notarized production reports. Subdivision 795.12(c) defined the term "attributed production."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), we are now seeking your comments on whether the amendments proposed by Virginia satisfy the applicable program approval

criteria of 30 CFR 732.15. If we determine that the amendments are adequate, they will become part of the Virginia program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. If your comments are received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office, we will not necessarily consider them in the final rulemaking or include them in the Administrative Record.

Public Hearing

If you wish to comment at the public hearing, you should contact the person listed above under **FOR FURTHER INFORMATION CONTACT** by close of business on September 7, 1999. If no one requests an opportunity to comment at a public hearing, we will not hold a hearing.

We request that you file a written statement at the time of the hearing, because it will greatly assist the transcriber. If you submit a written statement to OSM before the hearing, it will allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendments, you may request a meeting at the Big Stone Gap Field Office by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

If you are a disabled individual who has need for a special accommodation to attend a public hearing, please contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

IV. 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 conducted 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 specific 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 assumptions 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.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99-21643 Filed 8-19-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-6421-1]

Additional Flexibility Amendments to Vehicle Inspection Maintenance Program Requirements; Proposed Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes several substantive and minor revisions to the Motor Vehicle Inspection/Maintenance (I/M) requirements to provide additional flexibility to state I/M programs, both in response to the I/M provisions of the National Highway System Designation Act of 1995 (NHSDA), and in compliance with the Clean Air Act requirement that EPA's guidance for such programs be "from time to time revised." The proposed amendments would: modify the current I/M performance standard modeling requirements to reflect delays caused by the NHSDA, and to provide states greater flexibility in how they meet the performance standard; also in response to the NHSDA, remove the I/M rule provision establishing the decentralized, test-and-repair credit discount; revise certain test procedure, standard, and equipment requirements to better accommodate alternative test types and program designs. This revision also entails changing the data collection, analysis, and reporting requirements to

make them consistent with various alternative test and program types; as well as minor revisions to the inspector training requirements; revise the requirements for consumer protection and improving repair effectiveness to limit the current requirement to provide diagnostic information to those programs and test types capable of producing such information, reliably and practically; expand the options for complying with the on-road testing requirement to accommodate more recent variations, such as clean screening and non-tailpipe based, roadside tests.

DATES: Written comments on this proposal must be received no later than September 20, 1999. No public hearing will be held unless a request is received in writing by September 7, 1999.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-99-19. It is requested that a duplicate copy be submitted to David Sosnowski at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M-1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: David Sosnowski, Office of Mobile Sources, Regional and State Programs Division, 2000 Traverwood, Ann Arbor, Michigan, 48105. Telephone (734) 214-4823.

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