

program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review 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 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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 corresponding 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. Therefore, this rule will ensure that existing requirements previously published 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 corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 1999.

Charles E. Sandberg,

Acting Regional Director Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

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

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment
submission date

Date of final publication

Citation/description

August 2, 1999 December 27, 1999 62 IAC 1800.15(b)(2); 1847.3(a).

[FR Doc. 99-33465 Filed 12-23-99; 8:45 am]
BILLING CODE 4310-05-P

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: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent

regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The 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; regulation changes at section 4 VAC 25-130-700.5 to the definitions of "government financed construction" and "qualified laboratory;" and 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.

EFFECTIVE DATE: December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley 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 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. 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 on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the 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.

We announced receipt of the proposed amendment in the August 20, 1999, **Federal Register** (64 FR 45489), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 20, 1999. No one requested to speak at a public hearing, so no hearing was held.

By letters dated October 1, 1999 (Administrative Record Number VA–987), and October 28, 1999 (Administrative Record Number VA–993) the DMME submitted amendments to 4 VAC 25–130–795.11(b). We reopened the public comment period on November 15, 1999 (64 FR 61805), and invited public comment on the additional amendments. The comment period closed on November 30, 1999.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised paragraph notations to reflect organizational changes that result from this amendment.

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 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

We find this provision to be consistent with the Federal regulations at 30 CFR 795.5 which provides that a

State intending to Administer a SOAP program under a grant from OSM may submit a grant application to OSM for funding of the program under the procedures of 30 CFR part 735. Therefore, this provision can be approved.

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 when the construction is an approved Abandoned Mine Lands (AML) reclamation project under Title IV of SMCRA. 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 Federal definition of "government financed construction" at 30 CFR 707.5 was amended on February 12, 1999 (64 FR 7469). 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 SMCRA. 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. We find that the revised Virginia definition is substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 707.5 and can be approved.

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. We find that this revised definition is substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 795.3 and can be approved.

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." In effect, the "Division" (the DMME) is the program administrator. Therefore, we find that this change does not render the Virginia program less effective than the Federal SOAP provisions at 30 CFR Part 795 and can be approved.

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 and deleting language that was also deleted from the Federal rules in 1994. In addition, at subdivisions 795.6(a)(2)(i) and (ii), the pro rata share is increased from 5 percent to 10 percent. We find that with these changes, the State provision is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 795.6(a)(2) and can be approved.

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. These deletions are not requirements under 30 CFR 795.7(e). We find that, as amended, subdivision 795.7(e) is substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 795.7(e) and can be approved.

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. We find that as amended, this provision is substantively identical to and no less effective than the counterpart Federal regulation at 30 CFR 795.8 and can be approved.

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.

We find that with these changes, the State provision is substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 795.9 and can be approved.

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. These deletions are not requirements under 30 CFR 795.10.

We find that with these changes, the State provision is substantively identical to and no less effective than the counterpart Federal provision at 30 CFR 795.10 and can be approved.

8. 4 VAC 25-130-795.11 Assistance Funding

In subdivision 4 VAC 25-130-795.11(b), the phrase "is authorized to" is deleted and replaced by the word "shall." In effect, this change requires the DMME to establish a funding formula to be used for allocating funds to eligible small operators if the available funds are less than those required to provide the services pursuant to 4 VAC 25-130-795. We find that, as amended, this provision is substantively identical to and no less effective than the Federal regulations at 30 CFR 795.11(b) and can be approved.

In addition, Virginia submitted the funding formula it intends to use if the available funds are less than those required to provide the services pursuant to 4 VAC 25-130-795. Virginia stated that "[s]hould available funds ever be insufficient to provide all requested and appropriate assistance to eligible small operators, DMME will provide services on a first come, first serve basis. The funds will be used in order of the application dates for the requested assistance."

The State's funding formula is "an equitable distribution of Federal funds if such funds are insufficient to provide services for all eligible operators." 48 FR 2261, 2271 (January 18, 1983). Thus, we find that the formula is consistent with the Federal regulations at 30 CFR 795.11(b) and can be approved.

9. 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. The deleted language was also deleted from the Federal regulations in 1994.

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." These deleted subsections are not requirements under 30 CFR 795.12.

We find that with these changes, the State provision addresses all the provisions of and is no less effective than 30 CFR 795.12 and can be approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we 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 Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendments are appropriate and there appears to be no conflict with MSHA regulations.

Public Comments

We solicited public comments on the amendment. No comments were received.

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 any provisions of the State 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 amendments that Virginia proposed pertain to air or water quality standards. Therefore, EPA's concurrence with the proposed amendment is not necessary.

Pursuant to 732.17(h)(11)(I), we solicited comments on the proposed amendment from EPA. The EPA did not provide any comments.

V. Director's Decision

Based on the above findings, we approve the amendments submitted by Virginia on August 2, 1999, and amended on October 1 and October 28, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR part 946 which codifies decisions concerning the Virginia program. We are making this final rule effective immediately to expedite the State program amendment process, and to encourage Virginia to bring its program 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 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: December 15, 1999.

H. Vann Weaver,

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 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
* * *	* * *	* * *
August 2, 1999	December 27, 1999	Statute: 45.1–235 C of the Code of Virginia. Regulations: 4 VAC 25–130–700.5; 795.1; 795.6(a)(2); 795.7(e)(2) [deleted], and (e)(5) [deleted]; 795.8(a) and (b); 795.9(a), (b)(1) through (b)(6); 795.10(a)(5), (b), (c) [deleted] and (d) [deleted]; 795.11(b); 795.12(a), (a)(2), (a)(3), (b) [deleted], and (c) [deleted].