

(1) Department agencies shall issue an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public input on relevant studies and scientific information, data regarding the frequency, intensity, duration and other parameters of worker exposure in the affected industries, occupations and activities, key default factors and assumptions, and other relevant information related to the development of a health standard regulating occupational exposure to a particular toxic substance or hazardous chemical prior to issuing a Notice of Proposed Rulemaking (NPRM) or other regulatory action in that health rulemaking, except when promulgating an emergency temporary standard under section 6(c) of the OSH Act, 29 U.S.C. 655(c) (2000) or section 101(b)(1) of the Mine Act, 30 U.S.C. 811(b)(1) (2000).

(2) In its risk assessments, the Department's agencies shall identify and discuss key issues including, but not limited to, the reliability of data, significant uncertainties, choice of assumptions and default factors, and shall address all related comments from the public and peer reviewers in the subsequent Notice of Proposed Rulemaking (NPRM) and Final Rule.

(3) Risk assessments shall utilize the best available evidence, and the latest available scientific data in the field, including industry-by-industry evidence relating to working life exposures.

(4) Department risk assessments shall include and identify the following four components:

(i) *Hazard identification.* The hazard identification step examines whether a substance or chemical is a health hazard;

(ii) *Dose-response assessment.* The dose response assessment step examines the relationship between exposure to a hazardous substance and an adverse health outcome;

(iii) *Exposure assessment.* The exposure assessment step estimates exposure to the hazardous substance in the workplace;

(iv) *Risk characterization.* The risk characterization step provides estimates of risk to workers from occupational exposure scenarios of interest. The risk characterization also summarizes the key findings and discusses the limitations of the data, the choice of assumptions, the inherent uncertainties associated with the estimates of risk, limitations of the database, and how these factors impact the risk assessment.

(5) *Information quality and peer review.* Risk assessments shall be performed in accordance with Office of Management and Budget's (OMB) and

the Department's information quality and peer review guidelines.

(d) *Public access to rulemaking information.*

(1) The Department shall post together in an easily accessible and well organized format on <http://www.regulations.gov>, all relevant documents related to any rulemaking addressing occupational exposure to toxic substances and hazardous chemicals no later than fourteen days after the conclusion of the relevant step in the rulemaking process, including but not limited to publication of the ANPRM, conclusion of the Small Business Regulatory Fairness Act (SBREFA) process, publication of the NPRM, conclusion of any public hearing and the publication of the Final Rule.

(2) The documents posted shall include but are not limited to any underlying scientific studies relied upon in the rulemaking, to the extent possible given copyright limitations; all risk assessment analyses underlying the NPRM and Final Rule; the text of the ANPRM; SBREFA process documents; the text of the NPRM; all public hearing transcripts and briefs; all public comments; the final docket of the rulemaking; and the text of the Final Rule.

Signed at Washington, DC, this 26th day of August 2008.

**Leon R. Sequeira,**

*Assistant Secretary for Policy.*

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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; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Virginia Coal Surface Mining Reclamation Regulations pertaining to ownership and control, valid existing rights, self-bonding, and availability of records.

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.

This document gives the times and locations that the Virginia program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., local time, September 29, 2008. If requested, we will hold a public hearing on September 23, 2008. We will accept requests to speak until 4 p.m., e.s.t., on September 15, 2008.

**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: (276) 523-8100, E-Mail: [lsv@mme.state.va.us](mailto:lsv@mme.state.va.us).

**FOR FURTHER INFORMATION CONTACT:** Earl Bandy, Telephone: (865) 545-4103. Internet: [ebandy@osmre.gov](mailto:ebandy@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Virginia Program
- II. Description of the Submission
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Virginia Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of 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 DMME, with comments, via electronic mail on July 2, 2008. By letter dated July 17, 2008, DMME formally submitted the proposed amendments to its program (Administrative Record No. VA-1089.) The full text of the program amendment is available for you to read at the

location listed above under "ADDRESSES." DMME proposes the following changes:

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

The corresponding Federal regulations for this section are 30 CFR 701.5, 761.5 and 880.5.

DMME proposes to either add, delete or modify the following definitions:

"*Applicant Violator System*" or "*AVS*" means an automated information system of applicant, permittee, operator, violation and related data the Federal Office of Surface Mining Reclamation and Enforcement (OSM) maintains and the division utilizes in the permit review process.

"*Control*" or "*controller*", when used in Parts 4VAC25-130-773, 4VAC25-130-774, and 4VAC25-130-778 of this chapter, refers to or means (a) A permittee of a surface coal mining operation; (b) An operator of a surface coal mining operation; or (c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

"*Indemnity agreement*" means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these. The agreement shall, at a minimum:

- (a) Contain the date of execution.
- (b) Be payable to the "Treasurer of Virginia."
- (c) Be immediately due and payable in the event of bond forfeiture of the permit.
- (d) Be payable in a sum certain of money.
- (e) Be signed by the makers.

"*Knowing*" or "*knowingly*", which means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

"*Own*", "*owner*", or "*ownership*", as used in Parts 4VAC25-130-773, 4VAC25-130-774, and 4VAC25-130-778 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

"*Self-bond*," as provided by Part 801 of this chapter, means:

- (a) For an underground mining operation, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the

applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to \$1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

This definition in the Virginia regulation is being amended to delete the reference to "cognovit note" and replace such with "indemnity agreement", as the approved bonding instrument under 4VAC25-130-801.13, as being amended.

The DMME is proposing to delete "in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the division" and add "of a permittee" after "change." As proposed, the definition will read as follows:

"*Transfer, assignment, or sale of permit rights*" means a change of a permittee.

The DMME is proposing to add the following definition of "*Valid Existing Rights*" (VER) and delete from subsection (a) "for haulroads, that a person possesses a valid existing right for an area protected under of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to compensation under the Fifth and Fourteenth Amendments to the United States Constitution;" and add "§ 45.1-252 D"; the DMME is proposing to add "For haulroads," at the beginning of subsection c; at subsection (c) (2), "Was under a properly" is added at the beginning sentence and "A" is deleted; "or" is added after "way"; the DMME is proposing to add subsection 3 "Was used or contained in a valid permit that existed when the land came under the protection of § 45.1-252D or § 4 VAC 25-130-761.11." Subsection (c) is deleted entirely and subsection (e) is renamed subsection (d). In subsection (d), "That an" is added to the beginning of the sentence; "(s) that are" is added after "document"; "the" is deleted after "establish" and "valid existing" is added before "rights"; "to which the standard of paragraphs (a) and (d) of this definition applies" is deleted after "rights". As proposed, the definition will read as follows:

“*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 § 45.1–252 D of the Act and § 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 § 45.1–252 D and § 4VAC25–130–761.11. A person seeking to exercise valid existing rights would need:

(a) Except as provided in paragraph (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 § 4VAC25–130–761.11 and § 45.1–252 D;

(b) A demonstration of compliance with one of the following—

(1) That all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all necessary permits and authorizations had been made, before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11.

(2) That the land needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt made to obtain such permits and authorizations occurred before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11. The person must demonstrate that prohibiting the 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 § 45.1–252 D or § 4VAC25–130–761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of § 45.1–252 D or § 4VAC25–130–761.11 when the division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the division may consider—

(i) The extent to which coal supply contracts or other legal and business commitments that occurred before the land came under the protection of

§§ 45.1–252 D or § 4VAC25–130–761.11 depend upon the use of the land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11 relied upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation made before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11 relied upon the use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map under § 4VAC25–130–779.24(c) that was submitted before the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11.

(c) For haulroads, a person who claims valid existing rights to use or construct a road across the surface of lands protected by § 45.1–252 D or § 4VAC25–130–761.11 must demonstrate that one or more of the following circumstances exist, the road—

(1) Existed when the land upon which it is located came under the protection of § 45.1–252 D or § 4VAC25–130–761.11, and the person has the legal right to use the road for surface coal mining operations.

(2) Was under a properly recorded right of way or easement for a road in that location at the time the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11, and under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) Was used or contained in a valid permit that existed when the land came under the protection of § 45.1–252 D or § 4VAC25–130–761.11.

(d) That an interpretation of the terms of the document(s) that are relied upon to establish valid existing rights shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence. This amendment would apply to permit applications submitted on and after the date the amendment is approved by the Secretary of Interior and becomes effective upon promulgation pursuant to the Federal and Virginia Administrative Process Acts.

The DMME is proposing to add the following definition:

“*Violation*”, when used in the context of the permit application information or permit eligibility requirements of §§ 45.1–235 and 45.1–238(C) of the Act and related regulations, means:

(1) A failure to comply with an applicable provision of a Virginia, Federal, or other State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which the division has provided one or more of the following types of notice or OSM or a State regulatory authority has provided equivalent notice under corresponding provisions of a Federal or State regulatory program—

(i) A notice of violation under § 4VAC–25–130–843.12.

(ii) A cessation order under § 4VAC–25–130–843.11.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Part 4VAC–25–130–845 or 4VAC–25–130–846.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR Part 870.

(v) A notice of bond forfeiture under § 4VAC–25–130–800.50 when—

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under § 4VAC–25–130–800.50 or § 4VAC–25–130–801.19, the division orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.

The DMME is proposing to add the following definition:

“*Violation, failure or refusal*”, for purposes of Part 4VAC25–130–846, means:

(1) A failure to comply with a condition of an issued permit or the regulations implementing those sections; or

(2) A failure or refusal to comply with any order issued under Part 4VAC25–130–843, or any order incorporated in a final decision issued by the Director, except an order incorporated in a decision issued under § 45.1–246 of the Act.

The DMME is proposing to add “or regulation” after “law” in the definition of *Violation notice*. As proposed, it will read as follows:

“*Violation notice*” means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication.

The DMME proposes to add the definition of “*Willful or Willfully*.” As proposed, it will read as follows:

“*Willful*” or “*Willfully*” means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(1) Intentionally, voluntarily, or consciously; and

(2) With intentional disregard or plain indifference to legal requirements.

The DMME is proposing to delete the following definitions:

“*Cognovit note*” means an extraordinary note which authorizes an attorney to confess judgment against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgment against him if the obligation set forth in the note is not paid when due. Such judgment may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgment taken on it. The note shall, at a minimum:

(a) Contain the date of execution.

(b) Be payable to the “Treasurer of Virginia.”

(c) Be due and payable in the event of bond forfeiture of the permit.

(d) Be payable in a sum certain of money.

(e) Be signed by the makers.

This definition in the Virginia regulations is being deleted, as the indemnity agreement will be the bonding instrument utilized under 4VAC25–130–801.13 (as being amended).

“*Owned or controlled*” and “*owns or controls*” mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)(i) Being a permittee of a surface coal mining operation; (ii) based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity; or (iii) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a surface coal mining operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50% of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

### 2. 4VAC25–130–773.13. *Public Participation in Permit Processing*

The corresponding Federal regulation for this section is 30 CFR 773.6. The DMME proposes to add “or the last publication date of the newspaper notice required by Paragraph (a) of this section, whichever is later” after “notification”. As proposed, it reads as follows:

(b) Comments and objections on permit application.

(1) Within 30 days after notification or the last publication date of the newspaper notice required by Paragraph (a) of this section, whichever is later, written comments or objections on an application for a permit, significant revision to a permit under 4VAC25–130–774.13, or renewal of a permit under 4VAC25–130–774.15, may be submitted to the division by public entities notified under Paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

This change in the Virginia regulation will allow public entities to have the same period of time to review and comment on the application as afforded the public.

### 3. 4VAC25–130–773.15. *Review of Permit Applications*

The corresponding Federal regulation for this section is 30 CFR 773.7.

The DMME proposes to delete from (a)(1) “, unless a later time is necessary to provide an opportunity for a hearing under subdivision (b)(2) of this section.”

The DMME proposes to add to (a) subdivisions (3) and (4) which state:

(3) The division shall review the information submitted under §§ 4VAC25–130–778.13 and 4VAC25–130–778.14 regarding the applicant’s

and/or operator’s permit histories, business structure, and ownership and control relationships.

(4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

The DMME proposes to delete from subdivision (b)(1) “by any person who owns or controls the applicant” after “operator”; proposes to add “; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant’s or operator’s control was established or the violation was cited after November 2, 1988.” after “subdivision”; proposes to delete subsection (b)(4)(i)(C)(1) entirely and join (2) to the end of the sentence at (C). This change is to reflect the deletion of the last sentence of Section 510(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(e)) per the “Tax Relief and Health Care Act of 2006.” As proposed, this section will read as follows:

(a) General.

(1) The division shall review the application for a permit, revision, or renewal; written comments and objections submitted; information from the AVS; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held under 4VAC25–130–773.13(c), the decision shall be made within 60 days of the close of the conference.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(3) The division shall review the information submitted under §§ 4VAC25–130–778.13 and 4VAC25–130–778.14 regarding the applicant’s and/or operator’s permit histories, business structure, and ownership and control relationships.

(4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

(b) Review of violations.

(1) Based on available information concerning Federal and state failure-to-abate cessation orders, unabated Federal

and state imminent harm cessation orders, delinquent civil penalties issued pursuant to § 518 of the Federal Act and § 45.1–246 of the Code of Virginia, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the division shall not issue the permit if any surface coal mining and reclamation operation directly owned or controlled by either the applicant or operator is currently in violation of the Federal Act, this chapter, or any other law, rule or regulation referred to in this subdivision; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant's or operator's control was established or the violation was cited after November 2, 1988. In the absence of a failure-to-abate cessation order, the division may presume that a notice of violation issued pursuant to 4VAC25–130–843.12 or under a Federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or the AVS; or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the division shall require the applicant or operator before the issuance of the permit, to either:

(i) Submit to the division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the division that the applicant or operator or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under 4VAC25–130–775.13 affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under subdivision (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of proof submitted under subdivision (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subdivision

(b)(1)(ii) of this section, shall be conditionally issued.

(3) If the division makes a finding that the applicant or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 4VAC25–130–775.11.

(4)(i) Subsequent to October 24, 1992, the prohibitions of subsection (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remaining under a permit held by the person making application for the new permit.

#### 4. 4VAC25–130–773.20(c)(3).

##### *Improviently Issued Permits; General Procedures*

The corresponding Federal regulation for this section is 30 CFR 773.21.

The DMME proposes to amend subsection (c)(3) by deleting “Suspend the permit until” and delete (c)(4) entirely. As amended, it will read as follows:

(3) Serve the permittee with a preliminary finding that shall be based on evidence sufficient to establish a *prima facie* case that the permit was improviently issued. The finding shall inform the permittee that the permit may be suspended or rescinded under 4VAC25–130–773.21, if the violation is not abated or the penalty or fee is not paid.

#### 5. 4VAC25–130–773.21. *Improviently Issued Permits; Rescission Procedures*

The corresponding Federal regulation for this section is 30 CFR 773.23.

The DMME proposes to add “service of the notice of” after “After” and “as set forth in the notice” after “permit” in subsection (b). A new subsection (c) is added; subsection (e) is renamed to (d) and “or person aggrieved by the division's notice or decision” is added after “permittee”; “§ 4 VAC 25–130–775.11 of this chapter and” is added after “under”. As amended, it will read as follows:

If the division, under 4VAC25–130–773.20(c)(3 4), elects to suspend or rescind an improviently issued permit, it shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the division under 4VAC25–130–773.20(b) and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the division finds, that:

(1) The finding of the division under 4VAC25–130–773.20(b) was erroneous;

(2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee.

(b) Cessation of operations. After service of the notice of permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit as set forth in the notice, except for violation abatement and for reclamation and other environmental protection measures as required by the division; and

(c) A person may challenge an ownership or control listing or finding by submitting to the division a written explanation of the basis for the challenge, along with any evidence or explanatory materials that substantiates that the person did not or does not own or control the entire surface coal mining operation or relevant portion or aspect thereof. The person may request that any information submitted to the division under this section be held as confidential, if it is not required to be made public under the Act. The division shall review the information and render a written decision regarding the person's ownership or control listing or link within 60 days from receipt of the challenge.

(d) Right to appeal. The permittee or person aggrieved by the division's notice or decision may file an appeal for administrative review of the notice or decision under subparagraph (c) under

§ 4VAC25–130–775.11 of this chapter and § 2.2–4000 *et seq.* of the Code of Virginia.

**6. 4VAC25–130–774.12. Post-Permit Issuance Requirements**

The corresponding Federal regulation for this section is 30 CFR 774.11.

The DMME proposes to add this entire new section to the Virginia regulations and will read as follows:

(a) For purposes of future permit eligibility determinations and enforcement actions, the division will utilize the AVS, retrieving and entering appropriate data regarding ownership, control, and violation information. The division shall enter into the AVS—

Information—	Within 30 days after—
(1) Permit records .....	The permit is issued or subsequent changes made.
(2) Unabated or uncorrected violations .....	The abatement or correction period for a violation expires.
(3) Unpaid final civil penalties, charges, taxes or fees .....	The required due payment date.
(4) Changes in violation status .....	Abatement, correction, or termination of a violation, or a final decision from an administrative or judicial review proceeding.

(b) In the event the permittee is issued enforcement action under § 4VAC25–130–843.11, and fails to timely comply with the order's remedial measures, the division shall instruct the permittee to provide or update all the information required by § 4VAC25–130–778.11. However, the permittee would not be required to submit this information if a court of competent jurisdiction has granted a stay of the cessation order and the stay remains in effect.

(c) The permittee shall notify the division within 60 days of any addition, departure, or change in position of any person identified under § 4VAC25–130–778.13. The permittee shall provide the date of such addition, departure, or change of such person(s).

(d) Should the division discover that the permittee, or a person listed in an ownership or control relationship with the permittee, owns or controls an operation with an unabated or uncorrected violation, it will determine whether enforcement action is appropriate under Parts 4VAC25–130–843 and 4VAC25–130–846, or other applicable provisions under the Act. The division may issue a preliminary finding of permit ineligibility under § 45.1–238(C) of the Act, if it finds that the person had control relationships and violations that would have made the person ineligible for a permit under § 4VAC25–130–773.15. The finding shall be in accordance with 4VAC25–130–773.20(c)(3).

(e) If a determination of permit ineligibility is rendered by the division, the person would have 30 days from service of the written finding to submit any information that would tend to demonstrate the person's lack of ownership or control of the surface coal mining operation. The division would issue a final determination regarding the permit eligibility within 30 days of receiving any information from the person or from the expiration date that the person could submit the information under this subparagraph. A person

aggrieved by the division's eligibility finding would have the right to request review under Part 4VAC25–130–775.

**7. 4VAC25–130–774.17(a). Transfer, Assignment, or Sale of Permit Rights**

The corresponding Federal regulation for this section is 30 CFR 774.17.

As amended, it reads as follows:

(a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the division. At its discretion, the division may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the division that sufficient bond coverage will remain in place.

**8. 4VAC130–778.13. Identification of Interests**

The corresponding Federal regulation for this section is 30 CFR 778.11.

An application shall contain the following information:

(a) A statement as to whether the applicant and/or the operator, if different from the applicant, is a corporation, partnership, single proprietorship, association, or other business entity.

(b) The name, address, telephone number and, as applicable, employer identification number of the:

- (1) Applicant;
- (2) Applicant's resident agent;
- (3) Operator, if different from the applicant; and

(4) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business entity provide the

required information for every president, chief executive officer, partner, member, and/or director (or persons in similar positions), a positions), and every person who owns of record 10 percent or more of the entity.

(c) For the applicant and operator, if different from the applicant, information required by paragraph (d) of this section for every:

- (1) Officer.
- (2) Partner.
- (3) Member.
- (4) Director.

(5) Person performing a function similar to a director.

(6) Person who owns, of record, 10 percent or more of the applicant or operator.

(d) For each person listed from paragraph (c) of this section:

(1) The person's name, address, and telephone number.

(2) The person's position title and relationship to the applicant or operator, including percentage of ownership and location in the organizational structure.

(3) The date the person began functioning in that position.

(e) A list of all the names under which the applicant, operator, partners, or principal shareholders, and the operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within a five-year period preceding the date of submission of the application, including the name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority.

(f) For the applicant and operator, if different from the applicant, a list of any pending permit applications for surface coal mining operations filed in the United States, identifying each application by its application number,

jurisdiction, or by other identifying information when necessary.

(g) For any surface coal mining operation the applicant and/or operator owned or controlled within a five year period preceding the submission of the permit application, and for any surface coal mining operation the applicant and/or operator controlled on that date, the:

(1) Permittee's and operator's name and address, tax identification numbers;

(2) Name of the regulatory authority with jurisdiction over the permit(s) with the corresponding Federal or State permit number(s) and MSHA number(s); and

(3) The permittee's and operator's relationship to the operation, including the percentage of ownership and location in the organizational structure.

(h) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(i) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(j) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(k) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this Paragraph which is not on public file pursuant to State law shall be held in confidence by the division, as provided under 4VAC25-130-773.13(d)(3)(ii).

(l) Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities.

This list shall identify each license and permit by—

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(m) After an applicant is notified that his application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the

information previously submitted under Paragraphs (a) through (d) of this section.

(n) The applicant shall submit the information required by this section and by 4VAC25-130-778.14 in any prescribed OSM format that is issued.

#### 9. 4VAC25-130-778.14(c). Violation Information

The corresponding Federal regulation for this section is 30 CFR 778.14.

As proposed the amendment reads as follows:

(c) For any violation of a provision of the Federal Act or this chapter, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or operator. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

#### 10. 4VAC25-130-800.52(a) and (a)(2). Bond Forfeiture Reinstatement Procedures

There is no direct Federal counterpart regulation for this section.

As proposed, it reads as follows:

(a) Any person who owns or controls or has owned or controlled any operation on which the bond has been forfeited or the permit revoked pursuant to this chapter or pursuant to Chapters 15 [repealed], 17 (§ 45.1-198 *et seq.*) or 23 [repealed] of Title 45.1 of the Code of Virginia and who has not previously been reinstated by the Director may petition the Director for reinstatement. Reinstatement, if granted, shall be under such terms and conditions as set forth by the Director or his designee. The Director or his designee in determining the terms and conditions shall consider the particular facts and circumstances existing in each individual case. Reinstatement shall not be available to applicants for reinstatement where the division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment

as to indicate an intent not to comply with the Act, in accordance with 4VAC25-130-773.15(b)(3). As a minimum, the applicant for reinstatement shall satisfy the following requirements:

\* \* \* \* \*

(5) Pay to the Director a reinstatement fee of \$5,000 assessed by the Director on each site forfeited. These fees shall be used by the Director to accomplish reclamation on other forfeited or abandoned surface coal mining operations or conduct such other investigations, research or abatement actions relating to lands and waters affected by coal surface mining activities.

(b) Reinstatement by the Director shall be a prerequisite to the filing by the person (applicant for reinstatement) of any new permit application or renewal under this chapter or Chapters 15 [repealed], 17 (§ 45.1-198 *et seq.*), or 23 [repealed] of Title 45.1 of the Code of Virginia, but shall not affect the person's need to comply with all other requirements of said statutes, regulations or both promulgated thereunder.

#### 11. 4VAC25-130-801.12(c) and (d). Entrance Fee and Bond

There is no direct Federal counterpart regulation for this section.

As proposed, it reads as follows:

(c) The Director may accept the bond of an applicant of an underground mining operation without separate surety, as provided by 4VAC25-130-801.13, upon a showing by such applicant of a net worth, total assets minus total liabilities (certified by an independent certified public accountant), equivalent to \$1 million. Such net worth shall be, during the existence of the permit, certified annually by an independent certified public accountant and the certification submitted to the division on the anniversary date of the permit.

(d) The Director may accept the bond of an applicant of a surface mining operation or associated facility without separate surety, upon a showing by the applicant of those conditions set forth in 4VAC25-130-801.13(b). The financial solvency of the permittee shall be, during the existence of the permit, certified annually by an independent certified public accountant and the certification submitted to the division by June 1st or by such other date that the division may set.

#### 12. 4VAC25-130-801.13. Self-Bonding

There is no direct Federal counterpart regulation for this section.

As proposed, it reads as follows:



(a) The division may accept a self-bond from the applicant of a proposed surface coal mining operation in the form of an indemnity agreement.

(1) The applicant shall provide the:

(i) Name and address of a suitable agent to receive service of process in the Commonwealth.

(ii) Name and address of the certified public accountant(s) who prepared the statement required by this section.

(iii) Location of the financial records used to prepare the C.P.A. statement required by this section.

(iv) Evidence indicating a history of satisfactory continuous operation.

(2) For a proposed underground mining operation, the applicant has a net worth, certified by an independent certified public accountant in the form of an unqualified opinion appended to the financial statement submitted, of no less than \$1 million after total liabilities are subtracted from total assets. If the applicant is a subsidiary corporation, the applicant's parent organization's net worth need only be certified by the independent certified public accountant, if the applicant uses or includes any assets or liabilities of the parent organization in computing or arriving at the applicant's net worth.

Where the division has a valid reason to believe that the permittee's net worth is less than required by this subsection, it may require a new certified public accountant's statement and certification.

(3) The applicant of a proposed surface mining operation or associated facility shall submit evidence substantiating the applicant's financial solvency, with the appropriate financial documentation required by Paragraph (a)(4) of this section. (4)(i) An indemnity agreement must be executed by the applicant, and said agreement must also be executed by:

(A) If a corporation, two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided;

(B) To the extent that the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is a married individual, the applicant's spouse;

(ii) Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the agreement;

(iii) The agreement shall be a binding obligation, jointly and severally, on all who execute it;

(iv) For the purposes of this Paragraph, principal investor or parent organization means anyone with a 10 percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(b) Whenever a participant in the Pool Bond Fund applies for an additional permit or permits, the C.P.A. certification required by Paragraph (a)(2) or (a)(3) of this section shall be updated reflecting those prior reclamation obligations and self-bonding liabilities still in effect.

(c) If at any time the conditions upon which the self-bond was approved no longer prevail, the division shall require the posting of a surety or collateral bond before coal surface mining operations may continue. The permittee shall immediately notify the division of any change in his total liabilities or total assets which would jeopardize the support of the self-bond. If the permittee fails to have sufficient resources to support the self-bond, he shall be deemed to be without bond coverage in violation of 4VAC25-130-800.11(b).

#### 13. 4VAC25-130-840.14(c)(2).

##### *Availability of Records*

The corresponding Federal regulation for this section is 30 CFR 840.14.

The DMME is proposing to add "or electronic transmittal" after "mail"; add "the division offices and on its Internet site" after "at"; delete "a Federal, State or local government office in the county where the mining is occurring or proposed to occur" after "at"; add "or electronic transmittal" after "mail"; and delete "A list of government offices where information may be inspected can be obtained on request by contacting the division's Big Stone Gap office." As proposed, it reads as follows:

(2) At the division's option in accordance with the Virginia Freedom of Information Act (Chapter 21 (§ 2.1-340 *et seq.*) of Title 2.1 of the Code of Virginia), providing copies of subject information promptly by mail or electronic transmittal at the request of any resident of the area where the mining is occurring or is proposed to occur, provided, that the division shall maintain for public inspection, at the division offices and on its Internet site, a description of the information available for mailing or electronic transmittal and the procedure for obtaining such information.

This Virginia regulation is amended to provide for electronic transmittal of information and the maintenance of the description of available information

from the division offices and via the agency Internet site.

The Division has 2 offices located in the coalfield counties of Southwest Virginia which are readily available to the public and an Internet site to serve industry, other governmental agencies, and the public.

#### 14. 4VAC25-130-846.2. Definitions

The corresponding Federal regulation for this section is 30 CFR 701.5.

The following revised definitions are being moved to § 4VAC25-130-700.5 Definitions.

"*Knowingly*" means that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.

"*Violation, failure or refusal*" means:

(1) A violation of a condition of the permit issued pursuant to the Act and the regulations promulgated thereunder; or, (2) A failure or refusal to comply with any order issued under § 45.1-245 of the Act, or any order incorporated in a decision issued by the Director under the Act, except an order incorporated in a decision issued under § 45.1-246(B) of the Act.

"*Willfully*" means that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

### 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.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time, on September 15, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## **IV. Procedural Determinations**

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

### *Executive Order 12866—Regulatory Planning and Review*

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

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable 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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential

effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior certifies that 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, geographic regions, or Federal, State or local governmental agencies; 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 on the analysis performed under various laws and executive orders for the counterpart Federal regulations.

*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 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 2008.

**Michael K. Robinson,**

*Acting Regional Director.*

[FR Doc. E8-20175 Filed 8-28-08; 8:45 am]

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