1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998 and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired.

§ 1.1295–3T [Redesignated as § 1.1295–3]

Par. 6. Section § 1.1295–3T is redesignated as § 1.1295–3 and the newly designated section is amended by revising the section heading and paragraphs (b)(1) and (c)(5)(i) to read as follows:

§ 1.1295–3 Retroactive elections.

* * * * *

(b) * * *

(1) Reasonably believed, within the meaning of paragraph (d) of this section, that as of the election due date, as defined in § 1.1295–1(e), the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year;

* * * * *

(c) * * *

(5) *Time of and manner for filing a Protective Statement*—(i) *In general.* Except as provided in paragraph (c)(5)(ii) of this section, a Protective Statement must be attached to the shareholder's federal income tax return for the shareholder's first taxable year to which the Protective Statement will apply. The shareholder must file its return and the copy of the Protective Statement by the due date, as extended under section 6081, for the return.

* * * * *

Par. 7. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column.

Affected Section	Remove	Add
1.1293–1(c)(1), last sentence	§ 1.295–1T(j)	§ 1.1295–1(j).
1.1293–1(c)(2)(i), first sentence	§ 1.1295–1T(D)(2)	§ 1.1295–1(d)(2).
1.1295–1(b)(3)(iv)(A)	stock), and	stock) and
1.1295–1(c)(2)(ii), first sentence	1296(a)	1297(a)
1.1295–1(c)(2)(ii), first sentence	1297(b)(1).	1298(b)(1).
1.1295–1(c)(2)(iv), last sentence	§ 1.1293–1T(c).	§ 1.1293–1(c).
1.1295–1(d)(1), last sentence	(d)(5)	(d)(6)
1.1295–1(d)(2)(i)(A), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(2)(ii), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(2)(iii), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(6), first sentence	§ 1.1291–1T(e),	§ 1.1291–1(e),
1.1295–1(f)(1)(iii), last sentence	QEF calculated the QEF's	PFIC calculated the PFIC's
1.1295–1(g)(1) introductory text, second sentence, last word.	representation—	representations—
1.1295–1(g)(1)(ii)(A)	§ 1.1293–1T(a)(2)	§ 1.1293–1(a)(2)
1.1295–1(h), second sentence	§ 1.1295–1T	§ 1.1295–1
1.1295–1(i)(1)(iii), last sentence	never was made.	was never made.
1.1295–1(i)(3)(iii)	through 1297	through 1298
1.1295–3(a), first sentence	§ 1.1295–1T(j),	§ 1.1295–1(j),
1.1295–3(a), first sentence	§ 1.1295–1T(e)	§ 1.1295–1(e)
1.1295–3(b)(2)	and 1297	and 1298
1.1295–3(c)(3)	§ 1.1295–1T(d).	§ 1.1295–1(d).
1.1295–3(c)(4)(i)(A), third sentence	assessment of taxes	assessment of all PFIC related taxes
1.1295–3(c)(6)(i), last sentence	see § 1.1295–1T(c)(2)(iii).	see § 1.1295–1(c)(2)(iii).
1.1295–3(d)(1), first sentence	section 1296(a)	section 1297(a)
1.1295–3(d)(1), second sentence	section 1296(a)	section 1297(a)
1.1295–3(f)(2)(i) introductory text, second sentence	PFIC and the availability	PFIC and of the availability
1.1295–3(f)(4)(vi), first sentence	§ 1.1295–1T(d).	§ 1.1295–1(d).
1.1295–3(g)(3), first sentence	§ 1.1295–1T(d).	§ 1.1295–1(d).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In 602.101, paragraph (b) is amended by removing the entries for §1.1295–1T and 1.1295–3T and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.1295–1	1545–1555
1.1295–3	1545–1555

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1892 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–114–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 clarifies the State's interpretation of its regulations concerning the disposal of excess spoil. The amendment is intended to improve the operational efficiency of the Virginia program.

EFFECTIVE DATE: January 7, 2000.

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

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 November 24, 1998 (Administrative Record No. VA–961), the Virginia Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMLR) submitted a clarification to its interpretation of its regulations at 4 VAC 25–130–816/817.76 concerning the disposal of excess spoil.

We announced receipt of the proposed amendment in the December 23, 1998, **Federal Register** (63 FR 71049), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1999. No one requested to speak at a public hearing, so no hearing was held. By letters dated December 6, 1999, and January 11, 2000 (Administrative Record No. VA–995 and VA–998, respectively), the DMLR submitted additional information concerning the amendment, and withdrew the proposal to dispose of excess spoil on bond forfeiture sites.

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 proposed amendment.

The proposed clarification is as follows:

The Division of Mined Land Reclamation proposes to clarify the interpretation of 4 VAC 25–130–816.76. The regulation states that excess spoil may be placed on ''another area under a permit issued pursuant to the Act, or on abandoned mine lands under contract for reclamation according to the Abandoned Mine Land (AML) Guidelines and approved by the Division of Mined Land Reclamation.'' The Virginia Division of Mined Land Reclamation interprets this regulation to mean excess spoil from a permitted coal mining operation may be used by the Division of Mined Land Reclamation to reclaim a bond forfeiture site or an AML project site. Through any of the contracting procedures available to the agency, including negotiated, no-cost, or competitively bid contracts, the agency may cause the placement of excess spoil on the forfeiture or AML site in accordance with the provisions of a contract executed between the Division and a contractor. The spoil material removed from the permitted area will be demonstrated to be excess spoil and unnecessary for the achievement of approximate original contour within the permitted area.

The forfeiture or AML project must be:

1. Located in general proximity to the permit area;

2. on the AML inventory list or bond forfeiture list; and

3. referenced in the permit plans, along with the demonstration that the spoil is excess and identified on the permit map. However, the forfeiture or AML site will not be included in the permit acreage; will not be subject to the requirements for permits, performance bonds; and will not delay or otherwise affect bond release on the permitted area.

In the event the contractor fails to perform the work specified in the ''no-cost contract'', the Division will invoke the appropriate contact sanctions to cause completion of the contract terms. When the contractor and the mine operator happen to be one and the same, the contract will include an additional default provision. In this case, the contract will specify that the mine operator will revise the permit boundary to include the area upon which the excess spoil was placed pursuant to the ''no-cost contract.'' The permit performance bond requirements will become applicable.

In response to our comments on the proposal (Administrative Record Numbers VA–983, 984, and 985), DMLR submitted a letter on December 6, 1999, stating the following:

1. Virginia is proposing to follow the information contained in the letters of November 24, 1997, and November 24, 1998, as well as the AML Guidelines. The November 24, 1997, letter was a previous request by Virginia for OSM to approve an interpretation of 4 VAC 25–13–816.76 that would allow the placement of excess spoil on eligible AML sites pursuant to ''no-cost'' contracts. In that letter, Virginia committed to apply the following guidelines for such contracts:

—Conditions for placement of spoil are to be outlined in a written agreement between the operator and the regulatory authority;
—Only spoil not necessary to restore AOC or reclaim the permitted area can be placed on abandoned mine lands;
—The spoil is to be disposed of in a technically and environmentally sound fashion;
—The spoil is placed where it will not destroy or degrade features of environmental value;
—Areas for excess spoil disposal must be eligible as noted in the state reclamation plan;
—The mining company will not be required to permit the disposal area;
—No coal can be removed from the disposal area; and,
—The abandoned mine land features reclaimed will be moved to the completed column of AMLIS and noted as Private Reclamation;

2. For financial assurance, the DMLR would require the operator to post an AML bond on the site;

3. The DMLR withdraws its proposal to dispose of excess spoil on bond forfeiture sites; and

4. The DMLR stated that it will not allow fills to be constructed on abandoned mine land.

We disapproved a similar Virginia proposal to allow the placement of excess spoil on unpermitted abandoned sites through ''no-cost'' contracts in 1990. That proposal was disapproved for three reasons. First, Virginia failed to designate a fund that could be used in the event that the contractor defaults on his reclamation obligations. Second, the proposal did not contain a reference to the Federal AML policy guidelines. Finally, the proposal did not provide for ''public notice or participation such as would occur on an AML contract or

mining permit.'' (55 FR 2240, 2243–4, January 23, 1990).

We have also addressed the placement of excess spoil on adjacent abandoned mine land previously in program amendment decisions in other states. Most recently, we approved a Pennsylvania amendment regarding the placement of excess spoil on abandoned mine sites (March 26, 1999; 64 FR 14610). In that approval, we explained that in order to obtain our approval of ''no cost reclamation,'' such reclamation would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore the approximate original contour (AOC) and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. In short, ''no cost reclamation'' amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation contract. 64 FR at 14617.

The approved Virginia program at 4 VAC 25–130–816/817.76(a) provides that the DMLR may approve, where environmental benefits will occur, the placement of spoil not needed to restore the approximate original contour of the land and reclaim land within the permit area in a manner consistent with the Virginia Coal Surface Mining Control and Reclamation Laws and the Virginia Coal Surface Mining Reclamation Regulations on abandoned mine lands under a contract for reclamation according to the AML Guidelines and approved by the Division. In the amendment, Virginia would authorize the placement of excess spoil, via a no-cost contract, on AML sites. ''No-cost'' contracts are so called because the contractor receives no moneys from the state AML agency in exchange for performance of the terms of the contract. Rather, the contractor receives the benefit of a free disposal area for its excess spoil in consideration for performance of the needed reclamation. To be approvable, the policies and procedures applicable to such no-cost contracts must provide a degree of security comparable to contracts under Federally-funded AML projects.

In Virginia's amendment, AML lands will be reclaimed in accordance with 4 VAC 25–130–816/817.76(a)(2). That is, all reclamation must be in accordance with the AML Guidelines, regardless of whether the contracts are ''no-cost,'' or Federally funded AML contracts. The DMLR confirmed in its December 6, 1999, letter that the disposal of excess spoil as incidental reclamation will be in accordance with the AML Guidelines, will require an AML bond to be posted, and that excess spoil fills will not be constructed on the AML sites.

We find, therefore, that Virginia's amendment regarding the use of ''no-cost contracts'' under the approved provisions at 4 VAC 25–130–816/817.76 concerning the disposal of excess spoil and incidental reclamation will afford the same degree of performance incentives and safeguards as Federally funded AML construction projects. We are approving the amendment for the reasons set below.

First, the requirements of 4 VAC 25–130–816/817.76 provide that the placement of the excess spoil under a contract for reclamation must be in accordance with the AML guidelines. These guidelines were published in the **Federal Register** at 61 FR 68777, December 30, 1996.

Second, the amount of excess spoil placed on an abandoned site will only be that needed to reclaim the bond forfeiture or AML site. Therefore, valley, head-of-hollow and durable rock fills will not be constructed on these AML sites, because the amount of material deposited would exceed that necessary to address the reclamation of the forfeited site or AML impacts and problems.

Third, the use of the ''no-cost contracts'' contains sufficient performance incentives to require compliance with all applicable requirements to ensure that the sites are fully reclaimed. In its December 6, 1999, letter, the DMLR stated that it will require the operator conducting a no-cost contract to post an AML bond on the site. In addition, in its January 11, 2000, letter, the DMLR stated that Virginia's AML grant funds would also be a source available to reclaim a site in the event of operator default or, after the project is released, to correct any failure of the project reclamation.

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 there appears to be no conflict with MSHA regulations and/or procedures. The U.S. Department of Agriculture, Natural Resources Conservation Service responded and stated that its position is that the amendment be accepted. The U.S. Fish and Wildlife Service (USFWS) responded and stated that it appears that no impacts to Federally listed or proposed species or critical habitat will occur and, therefore, it has no comments on the proposed amendments. The U.S. Forest Service responded that it concurs with the amendment, as long as the AML sites will not lose soil or water quality as a result of this additional spoil material. In response, we note that the DMLR has confirmed in its December 6, 1999, letter that the disposal of excess spoil as incidental reclamation will be in accordance with the AML Guidelines. By following these guidelines, soil and water quality will be protected at least to the extent that they are under Federally-funded AML projects.

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 clarifications Virginia proposed pertain to air or water quality standards. Nevertheless, we requested EPA's comments on the proposed amendment. EPA did not provide any comments.

Public Comments

We solicited public comments on the amendment. The Virginia Department of Historic Resources responded that the amendment will not affect historic properties, and that it has no objection to the amendment.

V. Director's Decision

Based on the above findings, we approve the Virginia amendment as submitted by Virginia on November 24, 1998, and clarified on December 6, 1999, and January 11, 2000.

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.

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: January 13, 2000.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

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

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

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

2. Section 946.15 is amended 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
* *	* * *	* *
November 24, 1998	February 7, 2000	Policy clarification for implementing 4 VAC 25–130–816/817.76.

[FR Doc. 00–2641 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[GGD08–99–068]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor Navigation Canal, mile 4.5, at New Orleans, Orleans Parish, Louisiana. This deviation allows the Port of New Orleans to close the bridge to navigation daily from 7 a.m. until noon and from 1 p.m. until 6 p.m. from Monday, March 6, 2000 through Wednesday, April 19, 2000. This temporary deviation was issued to allow for the repair of the damaged fender system. The draw will open at any time for a vessel in distress. Presently, the draw opens on signal at all times.

DATES: This deviation is effective from 7 a.m. on Monday, March 6, 2000 through 6 p.m. on Wednesday, April 19, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor Navigation Canal in New Orleans, Louisiana, has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels,and other recreational craft. The Port of New Orleans requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the portions of the fender system.

This deviation allows the draw of the Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor