Dated: June 16, 1998.

Kathy Karpan,

Director Office of Surface Mining.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

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

2. Section 925.25 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 31, 1998	June 24, 1998 ..	AMLR plan sections 884.13(c)(6) and (d)(3); Emergency response reclamation program.

[FR Doc. 98–16811 Filed 6–23–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–112–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 revises numerous provisions of the Virginia program concerning surface coal mining and reclamation operations. The amendment is intended to revise the State program to be consistent with the Federal regulations.

EFFECTIVE DATE: June 24, 1998.

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. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated December 1, 1997 (Administrative Record No. VA–938), the Virginia Department of Mines, Minerals and Energy (DMME) submitted numerous amendments to the Virginia program. The DMME stated that the purpose of the amendments is to address issues identified by OSM in a letter dated May 30, 1997, pursuant to 30 CFR 732.17(d) (Administrative Record Number VA–955). The DMME also stated that the proposed amendments are intended to be materially consistent with the corresponding Federal standards.

The proposed amendment was published in the December 23, 1997, **Federal Register** (62 FR 67016), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1998. No one requested to speak at a public hearing, so no hearing was held.

By electronic mail dated March 6, 1998 (Administrative Record Number VA–953), OSM provided the State with comments on the proposed amendments. The DMME responded to those comments by electronic mail dated March 20, 1998 (Administrative Record Number VA–954).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program. Only the substantive changes will be discussed below.

1. 4 VAC 25–130–700.5 Definition of ''Other Treatment Facilities''

This definition has been amended to add ''neutralization'' as an example of chemical treatments, and to add ''precipitators'' as an example of mechanical structures. In addition, a new subsection (b) has been added to provide that '' other treatment facilities'' will have to comply with all applicable State and Federal water quality laws and regulations. The Director finds that with the proposed changes, the Virginia program definition of ''other treatment facilities'' is substantively identical to and therefore no less effective than the counterpart Federal definition at 30 CFR 701.5.

4 VAC 25–130–700.5 Definition of ''Previously mined area.'' This definition has been revised to state that '' previously mined area'' means land affected by surface coal mining operations prior to August 3, 1997, that has not been reclaimed to the standards of this Chapter. The Director finds that the proposed definition is substantively identical to and therefore no less effective than the counterpart Federal definition at 30 CFR 701.5.

2. 4 VAC 25–130–779.22 Land Use Information

This provision has been deleted. The counterpart Federal regulation at 30 CFR 779.22 was deleted on May 27, 1994 (59 FR 27932). In that final rule notice, OSM consolidated the land use information requirements of sections 30 CFR 779.22 and 30 CFR 780.23 into final 30 CFR 780.23. As discussed below in Finding 4, 4 VAC 25–130–780.23 concerning reclamation plans; land use information is being amended by the State, and is substantively identical to and therefore is less effective than the counterpart Federal regulations at 30

CFR 780.23. Therefore, the Director finds that the proposed deletion does not render the Virginia program less effective and can be approved.

3. 4 VAC 25–130–779.25 Cross Sections, Maps, and Plans

This provision is amended by deleting subsection (k) concerning slope measurements, and by revising the subsection's numbering system. The counterpart Federal provision at 30 CFR 779.25(a)(11) concerning slope measurements was deleted by May 27, 1994 (59 FR 27932). In that final rule notice, OSM explained that the provisions was deleted because it was redundant and provided no additional information beyond that already available to the regulatory authority under 30 CFR 777.14(a) and OSM's technical information processing system (TIPS). The Director notes that the Virginia program contains an approved counterpart to 30 CFR 777.14(a). Therefore, the Director finds that as amended, the deletion does not render the Virginia program less effective than the Federal regulations.

4. 4 VAC 25–130–780.23 Reclamation Plan; Land Use Information

The existing language of this subsection has been deleted and replaced in its entirety by new language. The Director finds that, as revised, the provision is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 780.23.

5. 4 VAC 25–130–780.25 Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments

This provision is amended by adding new subsection 780.25(a)(2) concerning impoundments that meet Class B and C criteria for dams as specified in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60, ''Earth Dams and Reservoirs.'' The Director finds that new subsection 780.25(a)(2) is substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 780.25(a)(2).

The provision is also amended in various locations to add references to the new language at subsection 780.25(a)(2), and to revise the provision to be consistent with the counterpart Federal regulations. The Director finds the revised language at 780.25(a), (a)(3), (b) and (f) to be substantively identical to and therefore no less effective than the counterpart Federal regulations with one exception. The revised language at subsection 780.25(c)(3) does not specify that any engineering design standards that may be established by the State must be approved by the Director through the State program amendment approval process.

However, Virginia already has approved engineering design standards at 4 VAC 25–130–816/817.49(a)(4)(ii). In addition, the DMME has informed OSM that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process (Administrative Record Number VA–954). Therefore, to the extent that any design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process, the Director finds the proposed provision to be no less effective than the counterpart Federal regulations at 30 CFR 780.25.

6. 4 VAC 25–130–780.35 Disposal of Excess Spoil

Subsection (b) is amended by adding the phrase ''except for the disposal of excess spoil on preexisting benches'' to the existing language. As amended, the requirements of subsection 780.35(b) do not apply to the disposal of excess spoil on preexisting benches. The Director finds that the amended language is substantively identical to and therefore no less effective than the counterpart language at 30 CFR 780.35(b).

7. 4 VAC 25–130–783.25 Cross Sections, Maps and Plans (Underground)

This provision is amended by deleting subsection (k) concerning slope measurements, and by revising the subsection's numbering system. The counterpart Federal provision at 30 CFR 783.25(a)(11) concerning slope measurements was deleted by May 27, 1994 (59 FR 27932). In that final rule notice, OSM explained that the provision was deleted because it was redundant and provided no additional information beyond that already available to the regulatory authority under 30 CFR 777.14(a) and OSM's technical information processing system (TIPS). The Director notes that the Virginia program contains an approved counterpart to 30 CFR 777.14(a). Therefore, the Director finds that as amended, the deletion does not render the Virginia program less effective the than the federal regulations. As amended, the provision is substantively identical to and therefore no less effective than the counterpart Federal regulations at the 30 CFR 783.25.

8. 4 VAC 25–130–784.15 Reclamation Plan: Land Use Information (Underground)

The existing language of this section has been deleted and replaced in its entirety by new language. The Director finds that as revised, the provision is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 784.15.

9. 4 VAC 25–130–784.16 Reclamation Plan: Siltation Structure, Impoundments, Banks, Dams, and Embankments (Underground)

Subsections (a), (b), (c), and (f) are amended. Subsection (a) is amended by adding the requirements for detailed designed plans, and deleting and replacing the term sedimentation pond with the term siltation structure. The Director finds these changes render the Virginia language substantively identical to and therefore no less effective than the counterpart Federal provision at 30 CFR 784.16(a).

Subsection (a)(2) is amended by adding language concerning impoundments meeting the Class B or C criteria in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), ''Earth Dams and Reservoirs,'' Technical Release No. 60 (TR–60). The Director finds the added language to be substantively identical to and therefore no less effective than the counterpart Federal requirements at 30 CFR 784.16(a)(2).

Subsection (a)(3) is amended to properly reference the amended subsection (a)(2). Subsection (b) has been amended by deleting language. The Director finds that as amended, the State provisions are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 784.16(a)(3) and (b).

New subsection (c)(3) is added to provide that the State may establish engineering design standards to ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified at subsection 817.49(a)(4)(ii). The director finds this new provision to be substantively identical to and therefore no less effective than the counterpart Federal provision at 30 CFR 784.16(c)(3) with one exception. The Federal provision also provides that the authorization for States to establish engineering design standards in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 must be

accomplished within the state program amendment approval process.

However, Virginia already has approved engineering design standards at 4 VAC 25–130–816/817.49(a)(4)(ii). In addition, the DMME has informed OSM that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process (Administrative Record Number VA–954). Therefore, to the extent that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process, the Director finds the proposed provision to be no less effective than to the counterpart Federal regulations at 30 CFR 784.16(c)(3).

Subsection 784.16(f) has been amended by deleting reference to structures 20 feet or higher or that impound more than 20 acre feet. In its place, language has been added concerning structures that meet Class B or C criteria for dams in TR–60 or meets the size or criteria of 30 CFR 77.216(a). The Director finds the amended language to be substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 784.16(f).

10. 4 VAC 25–130–784.23 Operation Plan; Maps and Plans

Subsection (c) is amended by adding a reference to subsection 784.23(b)(4) in addition to the references to (b)(5), (6), (10), and (11). The Director finds the added language to be substantively identical to and therefore no less effective than the Federal counterpart provision at 30 CFR 784.23(c).

11. 4 VAC 25–130–800.40 Requirements for Release of Performance Bond

New subsection (a)(3) is added to provide that the application for bond release shall include a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release. The Director finds the added language to be identical to and therefore no less effective than the counterpart Federal language at 30 CFR 800.40(a)(3).

12. 4 VAC 25–130–816/817.46 Hydrologic Balance; Siltation Structures

Subsections (a)(2) is amended by deleting the word ''permittee'' and replacing it with the word ''operator.'' The Director finds that as amended, subsections (a)(2) are identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.46(a)(2).

Subsections (b)(3) have been amended by deleting the last sentence that provided that the certification of completion of the siltation structures shall be provided to the division within 30 days after completion of construction of the structure. The Director finds that as amended, subsections (b)(3) are substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.46(a)(3).

Subsection (b)(5) have been amended by deleting the words ''growing seasons'' and adding in their place the word ''years.'' The Director finds that as amended, subsections (b)(5) are identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.46(b)(5).

Subsections (c)(2) have been amended to delete most of the existing language concerning spillways. As amended, subsections (c)(2) provide that a sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in 4 VAC 25–130–816.49(a)(9).

OSM revised the performance standards for impoundments on October 20, 1994 (59 FR 53022). For clarity, OSM moved the spillway design requirements of 30 CFR 816./817.46(c)(2)(i) through (iii) to sections 816/817.49(a)(9) and revised 816/817.46(c)(2) to reference sections 816/817.49(a)(9). The Director finds that as amended, Virginia subsection (c)(2) is substantively identical to and therefore no less effective than the revised Federal regulations at 30 CFR 816/817.46(c)(2) with one exception. 4 VAC 25–130–817.46(c)(2) concerning spillways contains an erroneous sentence fragment referencing Paragraph (c)(2)(i), a paragraph that does not exist.

In response to OSM's comment about the sentence fragment, the DMME stated that it will delete those additional words (Administrative Record Number VA–954). Therefore, to the extent that the DMME will delete the erroneous sentence fragment that references Paragraph (c)(2)(i), the Director finds the provisions to be no less effective than the counterpart Federal regulations at 30 CFR 816/817.46(c)(2).

13. 4 VAC 25–130–816/817.49 Impoundments

New subsections (a)(1) provide that impoundments meeting the Class B or C criteria in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), ''Earth Dams and Reservoirs,'' Technical Release No. 60 (TR–60) shall comply with ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60 and the requirements of this section. The Director finds the added language to be substantively identical and therefore no less effective than tot he counterpart Federal requirements at 30 CFR 816/817.49(a)(1).

Subsections (a)(4)(i) concerning stability have been amended to delete the words ''or located where failure would be expected to cause loss of life or serious property damage.'' In addition, the word ''state'' has been added between the words ''steady'' and 'seepage.'' OSM amended the counterpart Federal regulations on October 20, 1994 (59 FR 53022). In that amendment, OSM removed the phrase ''or located where failure would be expected to cause loss of life or serious property damage'' because it is redundant with the cited TR–60 reference. The Director finds that as amended, subsections (a)(4)(i) are identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(4)(i).

Subsections (a)(4)(ii) are amended by deleting the words ''meeting the size or other criteria of 30 CFR 772.216(a)'' and adding in their place the words ''included in Paragraph (a)(4)(i). In addition, and in the same sentence, the words ''and located where failure would not be expected to cause loss of life or serious property damage'' have been deleted. OSM made similar changes to its counterpart regulations at 30 CFR 816/817.49(a)(4)(ii) to help clarify which safety factors are related to specific types of impoundment classification. The Director finds that amended language in subsections (a)(4)(ii) to be identical to and therefore no less effective than the amended language in the counterpart Federal regulations at § 816/817.49(a)(4)(ii).

Subsections (a)(5) are amended by adding a new last sentence that provides that ''[i]mpoundments meeting the Class B or C criteria for dams in TR–60 shall comply with the freeboard hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60. This change renders subsections (a)(5) compatible with TR–60 standards added to subsections (a)(1). The Director finds the amended language in subsections (a)(5) to be substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(5).

Subsections (a)(6)(i) are amended by adding a reference to Class B or C criteria for dams in TR–60. The Director finds the amended language in subsections (a)(6) to be substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 816/817.49(a)(6).

Subsections (a)(9)(ii)(A) have been amended to provide that for impoundments meeting the Class B or C criteria for dams in TR–60, the impoundments must meet the emergency spillway hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60 or greater as specified by the Division. The Director finds the amended language in subsections (a)(9)(ii)(A) to be substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 816/817.49(a)(9)(ii)(A).

Subsections (a)(9)(ii)(B) have been amended by adding the words ''or exceeding'' between the word ''meeting'' and the words ''the size.'' The Director finds the amended language to be substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 816/817.49(a)(9)(ii)(B).

Subsections (a)(9)(ii)(C) have been amended by deleting the words ''meeting the size or other criteria of 30 CFR 77.216(a)'' and adding in their place the words ''included in Paragraph (a)(9)(ii) (A) and (B). The Director finds the amendment to subsections (a)(9)(ii)(C) to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.49(a)(9)(ii)(C).

Subsections (a)(11) concerning examinations has been amended to provide that impoundments meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) must be examined in accordance with § 77.216(a). In addition, subsections (a)(11) have been amended to provide that impoundments not meeting such criteria shall be examined at least quarterly. Also, subsections (a)(11) have been amended to provide that a qualified person designated by the operator shall examine impoundments for appearance of structural weakness and other hazardous conditions. Finally, the last sentence concerning a written record has been deleted. The Director finds that as amended, subsections (a)(11) are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(a)(12).

Subsections (c)(2)(i) have been amended by deleting the words ''[i]n the case of an impoundment meeting'' and adding in their place the words [i]mpoundments meeting the SCS Class B or C criteria for dams in TR–060 or.'' In addition, the words ''it is'' are deleted and replaced by the words ''shall be.'' The Director finds that as amended, subsections (c)(2)(i) are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(i).

Subsections (c)(2)(ii) have been amended to provide that impoundments not included in Paragraphs (c)(2)(i) of these sections shall be designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the division. The Director finds that as amended, subsections (c)(2)(ii) are substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(ii).

14. 4 VAC 25–130–816/817.74 Disposal of Excess Spoil; Preexisting Benches

Subsections (a) through (g) have been amended to mirror the counterpart Federal regulations at 30 CFR 816/817.74. On December 17, 1991 (56 FR 65612) OSM revised the Federal regulations at 30 CFR 816/817.74 concerning the disposal of excess spoil on preexisting benches to conform those requirements with the backfilling and grading requirements of §§ 816/817.102. The Director finds that, as amended, 4 VAC 25–130–816/817.74 are substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816/817.74.

15. 4 VAC 25–130–816/817.81 Coal Mine Waste; General Requirements

Subsections (a) have been amended to provide that all coal mine waste disposed of in an area other the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the division for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to comply with the identified provisions. The Federal Regulations at 30 CFR 816/817.81(a) were revised on December 17, 1991 (56 FR 65612) to provide that coal mine waste be ''hauled or conveyed'' instead of just requiring that it be ''placed.'' Additional language was also added to allow the disposal of coal mine waste in mine workings or excavations and to specify that the waste be placed in a controlled manner to promote fill stability and inhibit combustibility. The Director finds that as amended, 4 VAC 25–130–816/817.81(a) is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816/817.81(a). In addition, subsections (c)(3) have been deleted. This deleted subsection provided for specific numbers for thickness and compaction. There was no Federal counterpart to subsection (c)(3) and the deletion does not render the Virginia program less effective.

16. 4 VAC 25–130–816/817.89 Disposal of Noncoal Mine Wastes

These sections have been amended by deleting subsections (d). On December 17, 1991 (56 FR 65612) the Federal regulations at 30 CFR 816/817.89 were revised by deleting paragraphs (d), which required that any noncoal waste defined as hazardous under section 3001 of the Resource Conservation and Recovery Act (RCRA) be handled in accordance with subtitle C and any implementing regulations. This provision could have been interpreted as requiring OSM and State regulatory authorities to assume permitting, inspection and enforcement responsibilities that Congress assigned to the Environmental Protection Agency (EPA). Therefore, the Director finds that the deletion of subsections 4 VAC 25–130–816/817.89(d) does not render the Virginia program less effective than the counterpart Federal regulations at 30 CFR 816/817.89.

17. 4 VAC 25–130–816.104 Backfilling and Grading; Thin Overburden

The existing introductory paragraph is deleted and replaced by new language. On December 17, 1991 (56 FR 65612) OSM amended the Federal regulations at 30 CFR 816.104 concerning backfilling and grading, thin overburden. The Director finds that as amended, 4 VAC 25–130–816.104 is substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 816.104.

18. 4 VAC 25–130–816.105 Backfilling and Grading; Thick Overburden

The existing introductory paragraph is deleted and replaced by new language. On December 17, 1991 (56 FR 65612) OSM amended the Federal regulations at 30 CFR 816.105 concerning backfilling and grading, thick overburden. The Director finds that as amended, 4 VAC 25–130–816.105 is substantively identical to and therefore no less effective that the counterpart Federal regulations at 30 CFR 816/105.

19. 4 VAC 25–130–823.11 Applicability

Subsection (a) is amended by deleting the existing language and adding new language in its place. As amended, subsection (a) provides that the requirements of this Part shall not apply to coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of Part 816 for surface mining activities and of Part 817 for underground mining activities.

At the present time, the Federal regulation at 30 CFR 823.11(a) is suspended insofar as it relates to surface, as opposed underground, mining (February 21, 1985; 50 FR 7278). Therefore, Virginia's proposal to adopt 30 CFR 823.11(a), as applied to surface mining, is inconsistent with SMCRA, as interpreted by court decisions.

OSM informed DMME that this amendment copies language in the Federal regulations that has been suspended insofar as the language applies to surface mines. In response, the DMME stated that the proposed changes to 4 VAC 25–130–823.11(a) are hereby withdrawn (Administrative Record Number VA–954).

20. 4 VAC 25–130–840.11 Inspections by the Divisions

Subsection (f)(2) has been amended to provide that reclamation has been completed to the level established in 4 VAC 25–130–800.40 Phase II.

Subsection (g)(4) has been amended to delete the word ''or'' and add in its place the word ''and.'' As amended, subsection (g)(4) applies to a site that is, or was, permitted and bonded. Subsection (g)(4) is further amended at (g)(4)(i) to delete language pertaining to permit revocation proceedings, and to add the word ''either'' so that the provision applies to a permit that has either expired or been revoked. Subsection (g)(4)(ii) has been amended to delete the word ''the'' and replace that word with the words ''any available.'' As amended, the provision applies to any available performance bond.

Subsection (h) has been amended by deleting most of the existing language and replacing that language with new language. In addition, new language has been added concerning selecting an alternate inspection frequency, and concerning public notice.

The Federal regulations at 30 CFR 840.11(g) and (h) were amended on November 28, 1994 (59 FR 60876) to change the minimum inspection frequency for surface coal mining and reclamation operations that have been abandoned without completion of reclamation or abatement of violations. The change enables regulatory authorities to eliminate ineffective inspections to redirect resources to minesites where inspection and enforcement will achieve intended results. Before an abandoned site can qualify for a change in inspection frequency under this rule, the regulatory authority must make a written finding that a site is abandoned and that the change in inspection frequency is appropriate based on specified environmental and public health and safety criteria.

The Director finds the amendments to 4 VAC 25–130–840.11 to be substantively identical to and therefore no less effective than the counterpart Federal regulations at 30 CFR 840.11 with one exception. The amendments to subsection 4 VAC 25–130–840.11(f)(2) differ from the counterpart Federal regulations at 30 CFR 840.11. The Federal provision provides that an inactive surface coal mining and reclamation operation is one for which reclamation Phase II as defined at 30 CFR 800.40 has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program. The counterpart State provision, however, provides that an inactive surface coal mining and reclamation operation is one for which reclamation has been completed to the level established in 4 VAC 25–130–800.40 as Phase II. That is, the Virginia provision makes reference to completion of the reclamation that is equivalent to Phase II, rather than Phase II bond release. In its submittal of this amendment, Virginia stated that the change is necessary to make the rule applicable to the operations using Virginia's approved alternate bonding system, which does not include provision for a bond release at the completion of Phase II type reclamation. The Federal regulations at 30 CFR 840.11 (applicable to State regulatory authorities) and 842.11 (applicable to State regulatory authorities) and 842.11 (applicable to Federal inspections and monitoring) were amended on August 16, 1982 (57 FR 35620). Discussion of 30 CFR 840.11(f) (what is an inactive operation under a State program) was cross-referenced to the discussion of 30 CFR 842.11(c) (what is an inactive operation under a Federal program). 57 FR 35621. At the discussion to 30 CFR 842.11(c)(2)(iii)(B), OSM agreed with commenters that ''the determination of a mine's status as active or inactive should be based solely on the completion of Reclamation Phase II.'' Accordingly, OSM modified 30 CFR 842.11(c)(2)(iii)(B) to reflect this intention. Therefore, Virginia defining an inactive mine as one for which reclamation has been completed to the level established in 4 VAC 25–130–800.40 as Phase II, is consistent with OSM's intentions. The Director finds 4 VAC 25–130–840.11(f)(2) to be no less effective than the Federal regulations.

21. 4 VAC 25–130–843.12 Service of Notices of Violation, Cessation Orders, and Show Cause Orders

Subsection (a)(2) is amended by adding new language to the end of the first sentence. The added language provides that service may also be made by any means consistent with the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Virginia has also added the word ''certified'' immediately before the word ''mail.'' This latter change clarifies that the reference is to certified mail. In its submittal of this amendment, Virginia stated that the added reference to the Rules of the Supreme Court of Virginia is necessary since the State agency must follow State administrative procedures for service of documents. The Federal regulation at 30 CFR 840.13(c) states that the procedural requirements for enforcement provisions ''shall be the same as or similar to those provided in'' 518 and 521 of SMCRA and consistent with the applicable Federal regulations. Federal enforcement under 30 CFR 843.14(a) allows service that is consistent with the Federal Rules of Civil Procedure. The Federal regulations were amended on June 20, 1991 (56 FR 28442), to allow for increased flexibility. Virginia is also increasing its flexibility by following its counterpart to the Federal Rules of Civil Procedure. Therefore, the Director finds that the amended language is not inconsistent with the Federal regulations.

22. 4 VAC 25–130–845.17 Procedures for Assessment of Civil Penalties

Section (b) is amended by adding a reference to the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Subsection (b)(1) is amended replacing the word ''mail'' with the word ''documents.'' New subsection (b)(2) is added to provide that failure of the Division to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been

assessed: (i) proves actual prejudice as a result of the delay; (ii) makes a timely objection to the day. An objection shall be timely only if made in the normal course of administrative review.

The Director finds that the amended language is substantively identical to and therefore no less effective than the counterpart Federal language at 30 CFR 845.17 with one exception. The amended language at subsection (b) concerning reference to the Rules of the Supreme Court of Virginia governing service of a summons and complaint differs from the Federal regulations. As previously stated, the Federal rule at 30 CFR 840.13(c) states that the procedural requirements for enforcement provisions ''shall be the same as or similar to those provided in'' 518 and 521 of SMCRA and consistent with the applicable Federal regulations. Federal enforcement under 30 CFR 845.17(b) allows service that is consistent with the Federal Rules of Civil Procedure. The Federal regulations were amended on June 20, 1991 (56 FR 28442), to allow for increased flexibility. Virginia is also increasing its flexibility by following its counterpart to the Federal Rules of Civil Procedure. Therefore, the Director finds that the amended language is not inconsistent with the Federal regulations.

23. 4 VAC 25–130–845.18 Procedures for Assessment Conference

Subsection (a) is amended to change the time limit for requests for an assessment conference from 15 days to 30 days. Subsection (b)(1) is amended to provide that the assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later. Prior to this amendment, the conference was to be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. New language is added to subsection (b)(1) to provide that a failure by the Division to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

Subsection (b)(2) has been amended to delete the words ''and the Courthouse of the County is which [the mine] is located'' and replace that language with ''or field office located closest to [the mine].'' In effect notices of assessment conferences will be posted at the Division's Big Stone Gap office, and the field office located closest to the mine. Subsection (b)(3) is amended by deleting the words ''affirm, raise, lower, or vacate the penalty,'' and replace those words with the word ''either'' and the addition of new subsections (b)(3)(i) and (ii). The two new subsections provide that within 30 days after the conference is held, the conference officer shall either: (i) Settle the issue, in which case a settlement agreement shall be prepared and signed by the Division and by the person assessed; or (ii) affirm, raise, lower, or vacate the penalty.

New subsection (d) is added to provide that at (d)(1) if a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect. New (d)(2) provides that if full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within 30 days from the date of the rescission.

The Federal regulations at 30 CFR 845.18 were revised on March 8, 1991 (56 FR 10060). The revision extended by approximately 30 days the amount of time within which OSM may complete the necessary administrative actions to hold an assessment conference and by 15 days the amount of time within which a person charged with a violation may appeal an assessment conference officer's decision to the Office of Hearings and Appeals. The director finds that as amended, 4 VAC 25–130–845.18 is substantively identical to and consistent with the counterpart Federal regulations at 30 CFR 845.18.

24. 4 VAC 25–130–845.19 Request for Hearing

Subsection (a) is amended by changing from 15 days to 30 days the number of days that a person charged with a violation may contest the proposed penalty or the fact of the violation. On March 8, 1991 (56 FR 10060) the Federal regulations at 30 CFR 845.19 were similarly amended. The Director finds that as amended, the State provision is substantively identical to and consistent with the counterpart Federal regulations.

25. 4VAC 25–130–846.17 Assessment of an Individual Civil Penalty

Subsection (b)(3) is deleted and replaced by a new subsection (c). As amended, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules of the Supreme Court of Virginia governing service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept. On June 20, 1991 (56 FR 28442) the Federal regulations at 30 CFR 846.16(c) concerning service were amended. As amended, the Virginia provision is substantively identical to and therefore no less effective than the counterpart Federal provision with one exception. The Federal provision provides that service can be accomplished by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. The revised Virginia provision that service can be accomplished by any means consistent with the Rules of the Supreme Court of Virginia governing service of a summons and complaint. Federal enforcement under 30 CFR 846.17(c) allows service that is consistent with the Federal Rules of Civil Procedure. The Federal regulations were amended on June 20, 1991 (56 FR 28442), to allow for increased flexibility. Virginia is also increasing its flexibility by following its counterpart to the Federal Rules of Civil Procedure. therefore, the Director finds that the amended language is not inconsistent with the Federal regulation.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(I), comments were solicited from various interested Federal agencies. 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, USFWS had no comments on the proposed amendments. The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded and stated that the proposed amendments seem to conform more closely to presently practiced reclamation goals and standards, and better suits their intended use. Therefore, the NRCS stated that the amendments should be accepted. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the proposed amendment does not contain any

information that would be conflicting to MSHA regulations.

Public Comments

There were no public comments submitted.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

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

V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving Virginia's amendment as submitted by Virginia on December 1, 1997, and clarified by letter dated March 6, 1998.

4 VAC 25–130–780.25(c)(3) is approved to the extent that any other design standard that DMME may accept in lieu of the engineering standards will be first be approved through the state program amendment process.

4 VAC 25–130–784.16(c)(3) is approved to the extent that any other design standard that DMME may accept in lieu of the engineering standard will first be approved through the state program amendment process.

4 VAC 25–130–817.46(c)(2) is approved to the extent that the DMME will delete the erroneous sentence fragment that references Paragraph (c)(2)(i).

The Director notes that the amendments to 4 VAC 25–130–823.11(a) were withdrawn by the DMME.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has 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 section 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: May 29, 1998.

Allen D. Klein,

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
*	*	* * * * *
December 1, 1997	June 24, 1998	VA Code Sections 701.5; 779.22 [deletion], .25(k) [deletion]; 780.23, .25(a), (a)(2)(a)(3), (b), (c)(3), (f), 35(b); 783.25(k) [deletion]; 784.15, .16(a), (a)(2), (a)(3), (b), (c)(3), (f), .23(c); 800.40(a)(3); 816.46(a)(2), (b)(3), (b)(5), (c)(2), .49(a)(1), (a)(4)(i) & (ii), (5), (6), (9), (11), (c)(2), .74(a) through (g), .81(a), (c)(3) [deletion], .89(d) [deletion], .104, .105; 817.46(a)(2), (b)(3), (b)(5), (c)(2) .49(a)(1), (a)(4)(i) & (ii), (5), (6), (9), (11), (c)(2), .74(a) through (g), .81(a), (c)(3) [deletion], .89(d) [deletion]; 840.11(f)(2) & (g)(4), (h); 843.14(a)(2); 845.17(b) through (b)(2)(ii), .18(a), (b) through (b)(3)(ii), (d)(1) & (2), .19(a) and 846.17(b)(3) [deletion] and (c).

[FR Doc. 98–16812 Filed 6–23–98; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–058]

RIN 2115–AA97

Safety Zone: Burlington Independence Day Fireworks, Burlington Bay, VT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Burlington Independence Day fireworks program located on Burlington Bay, Lake Champlain, Vermont. The safety zone is in effect from 9 p.m. until 10:30 p.m. on Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Burlington Bay on Lake Champlain, Vermont.

DATES: This rule is effective from 9 p.m. until 10:30 p.m. on Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this updated application was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On May 18, 1998, the City of Burlington, VT submitted an Application for Approval of Marine Event to hold a fireworks program on the waters of Burlington Bay on Lake Champlain, Vermont. The sponsor notified the Coast Guard they are using larger fireworks shells than the annual regulation in 33 CFR 165.166 was written for. This regulation increases the radius of the safety zone from 250 yards to 360 yards. This regulation establishes a safety zone in all waters of Burlington Bay within a 360 yard radius of the fireworks barge located in approximate position 44°28′30.5″ N 073°13′32″ W (NAD 1983), beside the Burlington Bay breakwater. The safety zone is in effect from 9 p.m until 10:30 p.m. Friday, July 3, 1998, with a rain date of Saturday, July 11, 1998, at the same time and place. The safety zone prevents vessels from transitting this portion of Burlington Bay, Lake Champlain, Vermont and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Public notification will be made prior to the event via the Local Notice to Mariners.

Regulations for a permanent Regulated Navigation Area have been published for this event in 33 CFR 165.166. If the annual regulation is enforced for this event the safety zone area will not be large enough to provide for the safety of life on navigable waters due to the larger fireworks shells being used. This final rule will close a portion of Burlington Bay for one hour less than the current regulations in 33 CFR 165.166.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the following: this is an annual marine event currently published in 33 CFR 165.166, the event's date is the same, and the location is only 75 yards from the location in 33 CFR 165.166, this final rule will close a portion of Burlington Bay for less time than the current regulation will, the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, and advance notification which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operate and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.