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 (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 July 31, 1997, (Administrative Record Number VA–921), the Virginia Department of Mines, Minerals and Energy (DMME) stated that the Virginia legislature has amended, effective July 1, 1997, the Virginia Coal Surface Mining Control and Reclamation Act at Section 45.1–241(C). The amendment adds “letter of credit” as an acceptable form of collateral bond that the DMME may accept to satisfy the performance bonding requirements of the Virginia Act.

We announced receipt of the proposed amendment in the August 25, 1997, Federal Register (62 FR 44924), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 24, 1997. No one requested to speak at a public hearing, so no hearing was held.

During our review of the amendment, we identified concerns with the language of the amendment. We notified Virginia of our concerns on October 20, 1997 (Administrative Record Number VA–932). Virginia responded to our questions by letter dated October 23, 1997 (Administrative Record Number VA–933).

We reviewed the State’s comments and responded to them by letter dated November 26, 1997 (Administrative Record Number VA–942). In our response, we asked the State to provide an attorney general’s opinion that cites the statutory and/or regulatory basis for the interpretation submitted by the DMME in its October 23, 1997, letter. The DMME obtained an opinion from the Virginia Office of the Attorney General by Memorandum dated October 27, 1998 (Administrative Record Number VA–958). By letter dated June 4, 1998 (Administrative Record Number VA–956) Virginia deleted two sentences that were proposed in the July 31, 1997 submission. In a separate request we asked the DMME whether its use of the term “financial institution authorized to do business in the United States,” at 45.1–241(C), is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which states that letters of credit may be issued only by a bank, organized or authorized to do business in the United States. The DMME responded by letter dated February 23, 1999 (Administrative Record Number VA–972).

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.

As amended, Section 45.1–241(C) of the Virginia Coal Surface Mining Control and Reclamation Act provides for letters of credit as follows.

The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford the Department protection equivalent to a corporate surety’s bond. The issuer of the letter of credit shall promptly notify the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer’s charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer’s charter or license. The Department shall promptly notify the permittee and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace the bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until an acceptable bond is posted. The letters of credit shall be provided on the form and format established
by the Director. Nothing herein shall relieve the permittee of responsibility under the 
permit or the issuer of liability on the letter of 
credit.

After we reviewed the amendment, we made the following comments to the 
DMME. First, for letters of credit, there is 
no requirement that there be an 
indemnity agreement for a sum certain 
exercised by the permittee, as is required 
by the Federal regulations at 30 CFR 
800.5(b). Second, there is no 
requirement that when a letter of credit 
is used as security in areas requiring 
continuous bond coverage it shall be 
forfeited and shall be collected by the 
regulatory authority if not replaced by 
other suitable bond or letter of credit at 
least 30 days before its expiration date 
as is required by 30 CFR 800.21(b)(2).

The DMME responded to our 
comments by letter dated October 23, 
1997 (Administrative Record Number 
VA–933). The DMME explained their 
interpretation of the proposed 
amendment, how the amendment would 
be implemented, and why they believe 
the amendment is consistent with the 
Federal standards. The federal 
definition of “collateral bond” at 30 
CRF 800.5(b) states that it is “an 
indemnity agreement in a sum certain 
exercised by the permittee as principal” 
which then lists types of collateral, that 
includes irrevocable letters of credit. 
Virginia’s proposed statutory 
amendment does not state that a letter 
of credit is a collateral bond nor that the 
permittee will execute an indemnity 
agreement. Virginia’s regulatory 
definition of “collateral bond” at 30 
VAC 25–130–700.5 also requires an 
indemnity agreement in a sum certain 
exercised by the permittee which then 
lists types of collateral but it does not 
include irrevocable letters of credit. The 
DMME stated that the Virginia 
definition of “collateral bond” (at 30 
VAC 25–130–700.5) and the Federal 
definition at 30 CFR 800.5 differ only to 
the extent the Virginia definition does 
not specifically list “letter of credit” as 
a form of collateral bond, while the 
Federal definition does. The DMME 
explained that it omitted references 
to “letters of credit” from the rule because 
authority to accept a letter of credit as 
a performance bond did not previously 
exist under the enabling legislation 
(45.1–241). Virginia obtained a revision 
to 45.1–241(C) in mid-1997. The 
Virginia Act now provides for the 
acceptances of “letters of credit” as a 
performance bond. The DMME stated 
that it believes that a “letter of credit” 
is a type of collateral bond even though 
it is not listed as such in the 
Virginia rule at 30 CFR 25–130–700.5. The 
DMME further stated that since a “letter 
of credit” is considered to be a collateral 
bond, the DMME interprets the 
standards for collateral bonds to be 
applicable. The DMME stated, therefore, 
that it intends that any “letter of credit” 
accepted as a performance bond will 
meet the standards for “collateral 
bonds” and will be an indemnity 
agreement in a sum certain executed by 
the permittee and deposited with the 
DMME as is required for collateral 
bonds (Administrative Record No. VA– 
933). Also, Virginia’s proposed 
amendment to its statute and its existing 
regulation concerning collateral bonds 
at 4 VAC 25–130–800.21 lacks a 
counterpart to the Federal requirements 
concerning collateral bonds at 30 CFR 
800.21(b)(2). Section 800.21(b)(2) 
requires that thirty days before the letter 
of credit expires it be replaced with 
another bond or be forfeited. The DMME 
explained that the enabling statutory 
revision to 45.1–241(C) does provide 
DMME with the authority to collect the 
proceeds from a letter of credit should 
the term of the letter of credit expire 
before the bond is replaced or released. 
Section 45.1–241(C) specifies that the 
letter of credit “shall be payable to the 
Department upon demand.” The DMME 
stated that it will interpret the phrase 
“shall be payable to the Department 
upon demand” as Virginia’s “intent to 
demand payment at least 30 days prior 
the expiration date of such a letter of 
credit.” (Admin. record no. VA–933).

We reviewed the DMME’s 
interpretation, and in our response, we 
asked the State to provide an attorney 
general’s opinion that cites the statutory 
and/or regulatory basis for the 
interpretation submitted by the DMME 
in its October 23, 1997, letter. By 
memorandum dated October 27, 1998 
(Administrative Record Number VA– 
958) the Virginia Attorney General’s 
Office provided the DMME with its 
opinion that the provisions of Section 
45.1–241(C, Code of Virginia, are 
consistent with the requirements of the 
Federal surface mining program. That 
opinion further states that Section 45.1– 
241(C) may be implemented by the 
Virginia Division of Mined Land 
Reclamation (DMLR) in a manner 
consistent with both the Federal and 
Virginia program bonding requirements 
under the authority of Section 45.1–230, 
Code of Virginia.

Finally, Virginia’s statute states that a 
letter of credit may be accepted on 
certain designated funds issued by a 
financial institution authorized to do 
business in the United States. We asked the 
DMME whether its use of the term 
“financial institution” needs to be 
amended or defined so that letters of 
credit are not inconsistent with 
SMCRA and can be approved. We are 
making this finding and approving the 
amendment to (1) the extent that 
Virginia will implement this 
amendment as it stated in its letters 
dated October 23, 1997, and February 
23, 1999, and (2) to the extent that a 
bank issues letters of credit. In addition, 
and as we discussed above, the Virginia 
program regulations lack certain 
counterparts to the Federal provisions 
concerning letters of credit at 30 CFR 
800.5(b)(4) and 800.21(b)(2). 
Specifically, Virginia’s definition of 
“collateral bond” at 4 VAC 25–130– 
700.5 lacks a counterpart to the letter of 
credit provision in the Federal 
definition of “collateral bond” at 30 
CRF 800.5(b)(4). Also, Virginia’s 
regulation concerning collateral bonds 
at 4 VAC 25–130–800.21 lacks a 
counterpart to the Federal requirements 
concerning collateral bonds at 30 CFR 
800.21(b)(2). Lastly, Virginia’s use of the 
term “financial institution” needs to be 
amended or defined so that letters of 
credit are only issued by banks 
organized or authorized to transact 
business in the United States as 
required in 30 CFR 800.5(b)(4) and 
800.21(b)(2). Therefore, we are requiring 
that the Virginia program regulations be 
further amended, or the Virginia 
program be otherwise amended, to be 
less effective than the Federal 
regulations concerning letters of credit 
at 30 CFR 800.5(b)(4) and 800.21(b)(2).

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. Department 
of Labor, Mine Safety and Health 
Administration (MSHA) responded 
(Administrative Record Number VA– 
924) and recommended that the 
proposed language be denied. MSHA 
noticed that the proposed changes do not 
appear to offer the financial surety of 
the present system. MSHA stated that a 
letter of credit does not reflect the 
financial solvency sufficient for the 
authorization of surety and could be 
obtained under inflated values of
property, equipment, or other collateral. Completion of reclamation operations after mining is completed or reimbursement to the State, if the bond is forfeited, seems more a positive objective under the present system, MSHA stated.

The Director does not concur with the concern. The Director notes that the Federal regulations at 30 CFR 800.5(b) and 800.21(b)(2) authorized the use of letters of credit as a form of collateral bond to meet the performance bond requirements of 30 CFR 800.11. If a letter of credit bond is forfeited, the bank must pay the bond amount to the regulatory authority.

The U.S. Fish and Wildlife Service (USFWS) responded (Administrative Service Record Number VA-923). USFWS stated that the proposed amendment is not likely to adversely affect Federally listed species or designated critical habitat in Virginia.

Public Comments

The Virginia Department of Historic Resources commented and stated that it finds that the amendments submitted by the DMM will not affect historic properties.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(1)(i), 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)(1)(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 we are approving Virginia’s amendment concerning letters of credit as submitted by letter dated July 31, 1997, amended by letter dated June 4, 1998, and clarified by letters dated October 23, 1997 and February 23, 1999, and Memorandum dated October 27, 1998. We are approving this amendment to the extent that Virginia will implement this amendment as it stated in its letters dated October 23, 1997, and February 23, 1999, and to the extent that a bank issues letters of credit. In addition, we are requiring that the Virginia program regulations be further amended, or the Virginia program be otherwise amended, to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit.

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 SMVRA.

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 SMVRA 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.


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.

* * * * *
3. Section 946.16 is amended by amending paragraph (a) to read as follows:

Section 946.16 Required regulatory program amendments.

(a) By July 2, 1999, Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the Virginia program regulations, or otherwise amend the Virginia program, to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit.

46 CFR Parts 500, 501, 503, 504, 505, 506, 508, 509, and 5014.21. While tariffs will no longer be required for filing with the Commission, access to public information will be improved through the publication of tariffs in the Federal Register.

Amendments to 46 CFR Part 503 address passenger vessel financial responsibility, and the rules at 46 CFR Part 582 address anti-rebating certifications. The Commission now amends these rules to include the effects required by OSRA and to update, redesignate, and clarify the rules more generally. Because the changes made in this proceeding are routine and ministerial in nature, this rulemaking is published as a final rulemaking as to which no notice and comment period is necessary.

Redesignation of Former 46 CFR Part 500

The Commission's regulations at 46 CFR Part 500 address employee ethical conduct standards. The rule redesignates former part 500 as part 508.

Amendments to 46 CFR Part 501

OSRA amended Reorganization Plan No. 7 of 1961, 75 Stat. 840, to change the Commission's quorum requirements. Accordingly, the Commission has determined to amend 46 CFR 501.2(d) to track the new statutory language.

Amendments to 46 CFR Part 503

The Commission's regulations at 46 CFR Part 503 address employee access to public information. OSRA's elimination of tariff filing with the Commission has rendered unnecessary those portions of 46 CFR 514 relating to fees for the provision of copies of tariffs. See 46 CFR 514.21. While tariffs will no longer be filed with the Commission, the