

Original amendment submission date	Date of final publication	Citation/description
* January 28, 1999	* May 3, 1999	* Sections 12.143(a)(2), (b)(1) and (b)(2); .145(b)(3); .187(b)(3); .199(2); .379; .389; .546; .554; and .651(9) and (13).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA-110-FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed 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 proposed amendment changes the Virginia Coal Surface Mining Control and Reclamation Act to add "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. The amendment is intended to revise the State program to be consistent with the Federal regulations.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523-4303.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46

FR 61085-61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated 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 to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and 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 permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, 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 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume 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 acceptable bond is posted. The letter 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 executed 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 CFR 800.5(b) states that it is "an indemnity agreement in a sum certain executed 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 4 VAC 25-130-700.5 also requires an indemnity agreement in a sum certain executed 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 4 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 specifically listed as such in the Virginia rule at VAC 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 that 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 to an 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 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. In its response, the DMME stated that its intention is to apply all the criteria specified at subsection (b), including (b)(1).

We find that the amendments to Section 45.1-241(C) concerning 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 CFR 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 no 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 stated 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 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 DMME will not affect historic properties.

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 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 SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1999.

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
July 31, 1997	May 3, 1999	Code of Virginia at § 45.1-241(C) concerning letter of credit.

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.

[FR Doc. 99-11035 Filed 4-30-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-99-031]

Drawbridge Operation Regulations: Hutchinson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the Drawbridge Operation Regulations governing the operation of the Pelham Parkway Bridge, mile 0.4, across the Hutchinson River in New York City, New York. This deviation from the regulations authorizes the bridge owner, the New York City Department of Transportation (NYCDOT), to not open the bridge for vessel traffic from March 28, 1999 through May 22, 1999, Monday through Friday, between 7 a.m. and 5 p.m., daily. This action is necessary to facilitate needed repairs to the bridge.

DATES: This deviation is effective from March 28, 1999 through May 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Bridge Management Specialist, at (212) 668-7195.

SUPPLEMENTARY INFORMATION: The Pelham Parkway Bridge, mile 0.4, across the Hutchinson River has a vertical

clearance of 13 feet at mean high water and 20 feet at mean low water in the closed position. Vessels that can pass under the bridge without an opening may do so at all times.

The NYCDOT requested a temporary deviation from the operating regulations for the Pelham Parkway Bridge in order to facilitate necessary repairs to the bridge. This work is essential for public safety and continued operation of the bridge.

This deviation from the normal operating regulations is authorized under 33 CFR § 117.35.

Dated: April 15, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

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FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 501, 503, 504, 506, 507, 508, 540 and 582

[Docket No. 99-09]

Amendments to Regulations Governing Employee Ethical Conduct Standards, the Federal Maritime Commission—General, Public Information, Environmental Policy Analysis, Monetary Penalty Inflation Adjustments, Nondiscrimination on the Basis of Handicap, Passenger Vessel Financial Responsibility, and Certification of Policies and Efforts To Combat Rebating

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations relating to agency organization, public information, procedures for environmental policy analysis, civil monetary penalty inflation adjustments, nondiscrimination on the basis of handicap, passenger vessel operations, and anti-rebating certifications, and is redesignating its regulation relating to employee ethical conduct standards, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: This rule is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105-258, 112 Stat. 1902, amends the Shipping Act of 1984 ("1984 Act") in several areas. The Commission's rules at 46 CFR Parts 500, 501, 503, 504, 506, and 507 address employee ethical conduct standards, the organization of the Commission, public information, environmental policy analysis, civil monetary inflation adjustment, and nondiscrimination on the basis of handicap. The Commission's rules at 46 CFR Part 540 address passenger vessel financial responsibility, and the rules at 46 CFR Part 582 address anti-rebating certifications. The Commission now amends these rules both to make certain changes 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 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