



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Department of Mines, Minerals, and Energy
<b>Virginia Administrative Code (VAC) citation</b>	4 VAC 25 - 130
<b>Regulation title</b>	Coal Surface Mine Reclamation Regulations
<b>Action title</b>	Coal Surface Mining Reclamation Regulations – Amend sections 4VAC 25-130-700.5 and 800.21; use of irrevocable letters of credit.
<b>Document preparation date</b>	December 10, 2003

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

### Summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The Coal Surface Mining Reclamation Regulation, 4 VAC 25-130, is being amended as exempt from the Administrative Process Act pursuant to § 2.2-4006 A 4(c). It is being amended to be consistent with changes made to corresponding Federal regulations.

In section 4 VAC 25-130-700.5, DMME is amending the definition of “collateral bond” so that a coal mine permittee may use an irrevocable letter of credit from any bank organized or authorized to transact business in the United States as an indemnity agreement between the permittee and the Department of Mines, Minerals and Energy, Division of Mine Land Reclamation.

The section 4 VAC 25-130-800.21 amendment removes the “letter of credit” as being subject to the same conditions as a collateral bond but requires the “letter” to be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500);

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and

(3) The letter of credit shall be payable to the Department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4 VAC 25-130-800.50.

### Statement of agency final action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On December 10, 2003 the Virginia Department of Mines Minerals and Energy amended a final regulation titled the Virginia Surface Mining Reclamation Regulations, 4 VAC 25-130.

### Substance

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

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On May 3, 1999, federal Office of Surface Mining (OSM) approved an amendment to the Virginia Coal Surface Mining Control and Reclamation Act that added use of a “letter of credit” as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act (64 FR 23542).

By letter dated September 22, 2000, (Administrative Record Number VA-1008) the Virginia Department of Mines, Minerals and Energy (DMME) submitted a regulatory amendment to the OSM to change the Virginia program rules at 4 VAC 25-130-700.5 and 4 VAC 25-130-800.21 in response to the statutory amendments approved by OSM on May 3, 1999. The OSM approved this regulatory amendment on August 20, 2001.

The changes to existing regulation is outlined in the following chart:

Current section number	Current requirement	Proposed change and rationale
<p>4 VAC 25-130-700.5</p>	<p>Irrevocable letters of credit are not allowed as a collateral bond for coal surface mining permits.</p> <p>4 VAC 25-130-700.5. Definitions.</p> <p>“Collateral bond” means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:</p> <p>(a)...</p> <p>(c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral.</p>	<p>The amendment to section 4 VAC 25-130-700.5 adds a new subdivision to the definition of “collateral bond” so that a permittee may use an irrevocable letter of credit of any bank organized or authorized to transact business in the United States as an indemnity agreement between the permittee and the Department of Mines, Minerals and Energy, Division of Mine Land Reclamation.</p> <p>4 VAC 25-130-700.5. Definitions.</p> <p>“Collateral bond” means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:</p> <p>(a)...</p> <p>(c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral; <i>or</i></p> <p>(d) <u>An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the Department at sight prepared in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision) International Chamber of Commerce (Publication No. 500).</u></p>

<p>4 VAC 25-130-800.21</p>	<p>Letters of credit are not addressed in the current regulation.</p> <p>4 VAC 25-130-800.21. Collateral bonds</p> <p>(a) Collateral bonds shall be subject to the following conditions: The division shall- -...</p> <p>(c.) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the division at the time collateral is offered.</p>	<p>The amendment to section 4 VAC 25-130-800.21 specifies the conditions applicable to letters of credit used as a bond:</p> <p>4 VAC 25-130-800.21. Collateral bonds.</p> <p>(a) Collateral bonds, <u>except for letters of credit</u>, shall be subject to the following conditions: The division shall--</p> <ol style="list-style-type: none"> <li>(1) Keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.</li> <li>(2) ....</li> </ol> <p><u>(c) Letters of credit shall be subject to the following conditions:</u></p> <ol style="list-style-type: none"> <li>(1) <u>The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500);</u></li> <li>(2) <u>Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and</u></li> <li>(3) <u>The letter of credit shall be payable to the Department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4 VAC 25-130-800.50.</u></li> </ol> <p>(e <u>d</u>) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the division at the time collateral is offered.</p>
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## Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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The Virginia Coal Surface Mining Reclamation Regulations govern mine land reclamation and the remediation of degrading surface conditions that could result from underground coal mining. Amending the definition of collateral bond to include letters of credit adds to the number of options available to the mine operator as a means of securing continuous bond coverage. This helps the mining industry promote mine land reclamation, thus decreasing negative factors that may affect families and society. This has a positive family impact.

Protection of the public health, safety and welfare from potentially adverse effects of mining operations and ensuring that families, property owners, homeowners and ground water supplies are protected has a generally positive effect in areas around coal mines. The regulation has no adverse effect on family formation, stability, or autonomy.