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DEPARTMENT OF THE INTERIOR

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

30 CFR Chapter VII: Subchapter J – Performance Bond and Insurance Requirements for Surface Mining and Reclamation  
Operations: Parts 800, 805, 806, 807, 808, 809

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program

ACTION: Proposed rules.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement is seeking comments on these proposed rules which would implement a nationwide permanent program for the regulation of surface and underground mining operations by the States and the Federal Government as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These proposed rules are intended to strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

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{Preamble: 43 FR 41729}

**SUBCHAPTER J – PERFORMANCE BOND AND INSURANCE REQUIREMENTS FOR SURFACE MINING AND RECLAMATION OPERATIONS**

The Act requires that all surface coal mining and reclamation operations be bonded before a permit is issued for conducting those operations. The Act also allows the Office to provide regulations for bonding of underground mining and reclamation operations insofar as those operations may impact on the surface. The regulations of this Subchapter have been developed to provide a maximum of economic incentive for operators to conduct surface coal mining and reclamation operations in accordance with the Act, the regulations of this Chapter, or State law and regulations adopted under it, and the conditions of permits issued for those operations.

These regulations are intended to accomplish two major functions:

(1) Provide a set of minimum standards for establishing a system of bonding to be used by the State regulatory authority if there is an approved State program or by the Office if it is the regulatory authority under a Federal program.

(2) Establish procedures and criteria for the release or forfeiture of bonds to assure the faithful performance of the Act and the requirements of the permit.

The minimum standards are based on the requirement of the Act that in the event the operator does not faithfully perform all of the Act's requirements and permit conditions, the bond will be sufficient to reclaim the affected area to those requirements. Therefore, the criteria for acceptable types of bonds, bond amounts, periods of liability, and terms and conditions for bonds that have been established reflect the best judgment of the Office, and the requirements of the Act. The criteria were developed to assure faithful performance of the Act for any area disturbed by surface or underground coal mining activities.

The authority for these regulations is derived from Sections 102, 201(c), 501(b), 509, 507(b)(16), 515(b)(8) and (10), 516(d), 519, and 529 of the Act, relevant portions of the legislative history, and expert opinion from the Office's staff. Where it is appropriate in the following discussion, specific references to applicable authorities will be cited, in addition to the alternatives considered in arriving at the particular rule. {41729}

**PART 800 – GENERAL REQUIREMENTS**

This Part proposes general provisions for bonding and requirements of liability insurance imposed on the permittee. More specific provisions are provided in later parts and sections. In addition, this Part takes into cognizance the difference between the legal authority to impose regulations on the Federal regulatory authority and on the State regulatory authority pursuant to an approved State program.

Section 800.11(a) is intended to make it clear that a permittee is required to file bonds prior to the regulatory authority issuing a permit for coal mining on lands within an existing permit area.

Section 800.11(b), based on Section 509(a) of the Act, reflects the concept that a bond obligation may cover a portion of a permit area for one year periods on lands within that area upon which the operator wishes to engage in surface coal mining and reclamation operations during the term of the permit. Liability will attach to each bond posted for each one year increment of mining to be conducted within the term of the permit. Under this approach, an operator may also seek release of his bond obligation in incremental stages after fulfilling the requirements of the permit, Act and applicable regulations. The major alternative considered was to provide liability coverage for an entire permit area while allowing for incremental bonds in lesser amounts for portions of the permit area. This proposal would have allowed bond amounts to be calculated on smaller portions of the permit area but would have required the liability for each bond to cover the entire area under permit. The Office believes the proposed rule presents a regulatory scheme more consistent with the language of the Act and the realities of surety transactions in calculating bond amounts in relation to liability incurred. {41730}

Section 800.12 identifies the requirement of Section 507(f) of the Act that an applicant for a permit must also provide a certificate of liability insurance or demonstrate that he can satisfy State and Federal requirements for self-insurance. In addition to satisfying those requirements, he must also, at a minimum, meet the standards for self-insurance proposed by the Office.

Section 800.13 proposes responsibilities for the regulatory authority in conducting its bonding program. It should be noted that each regulatory authority must, as part of their program, meet the minimum provisions of this Subchapter. The bond amount must be based on the estimated actual cost to the regulatory authority for completing all the reclamation requirements of the Act or an approved State program. The amounts will be established by the regulatory authority based on the variables that may occur relating to the costs of reclamation, such as the acreage that may be affected, the estimated high-wall of the pit area, the size of the pit area itself, the inherent problems with water that may arise from the geologic structure that is being mined and various other conditions relevant to the cost of reclamation. The major alternative considered was to require the regulatory authority to establish a rate guideline for bond amounts. The guideline would have been developed by a registered professional engineer and subject to approval by the Office. Although considered, this alternative was not accepted because the Office did not wish to burden the States and require an independent analysis that could encourage variation in the rate structure.

Comments were received suggesting changes which would make the surface and underground bond requirements more consistent. These comments were considered and accepted and the surface and underground requirements were combined in the proposed regulations. Bonding requirements for surface and underground mining are based on the costs necessary to repair damage identified and described in the performance standards of Subchapter K. Part 800 combines objectives, requirements to file a bond, requirements to file a certificate of liability insurance, and regulatory authority requirements for both surface and underground mining activities.

## **PART 805 – AMOUNT AND DURATION OF PERFORMANCE BONDS**

This Part proposes criteria for determining the initial amount of either a surface or underground coal mining bond. This Part also sets forth the minimum amount for each bond, the periods of liability, and the ability of the regulatory authority to adjust the bond amount if the permittee or any person with an interest that may be adversely affected makes such a request.

Section 805.11(a) provides the standard the regulatory authority must use to determine the appropriate amount of bond for each surface coal mining and reclamation operation. The Section makes it clear that the amount of such bond must be based on the estimated actual cost to the regulatory authority of completing the appropriate reclamation plan and not on the estimated cost to the permittee since in the event of forfeiture, the regulatory authority will be required to do the work. This is an important distinction because in most cases the cost to the regulatory authority will exceed the cost to the permittee.

Section 805.11(b) proposes to provide a non-exclusive list of factors the regulatory authority should use in making its determination as to bond amount. In addition, the regulatory authority should consider the cost it would incur to reclaim an area for which a bond is forfeited, considering the specific standards in Subchapter K.

Section 805.11(b)(3) was added to provide that the bond will be calculated on the additional cost of the regulatory authority which might arise from applicable public contracting requirements or the requirement to bring additional personnel or equipment to the permit area. This is the law in Pennsylvania and it is based on the experience that these public

contracting requirements and the costs of bringing personnel and equipment to a site after abandonment are substantial and may result in cost to the regulatory authority of two, three, or perhaps four times what it might be to a permittee to complete the reclamation requirements. This requirement is believed necessary because the law is directed toward the realistic cost to the regulatory authority to complete the reclamation requirements.

Section 805.11(b)(5) was added to provide for consideration of cost increases which may occur on the basis of increases during the preceding five year period. Failure to consider such increases would result in a bond which would not be adequate to complete essential reclamation activities.

The major alternative to the proposed rule was to propose very specific criteria for both surface and underground mining activities. This was rejected in favor of the approach taken because it is more consistent with the requirement in the Act that all estimated costs be covered by a bond. Moreover, specific performance standards upon which the regulatory authority should base its determination as to an amount are already included in Subchapter K and it is therefore unnecessary to reiterate them here.

Section 805.12 is a statement of the minimum amount for performance bonds for surface coal mining and reclamation operations. This Section follows the basic intent of the Act that bonds shall be used to assure the faithful performance of applicable performance standards in the Act and the regulations of this Chapter. The Section also specifies, as does the Act in Section 509(a), that in no case shall the bond be less than \$1 0,000 for a permit area, even if the estimated actual cost would be less.

Comments were received regarding minimum amounts and the Office considered proposing specific amounts for underground mining activities. The Office has not done so for the reasons previously stated and for the additional reason that costs for reclaiming either surface or underground workings may vary significantly from state to state or region to region.

Section 805.13 provides the period of liability or duration of the bonding obligation. The liability period for surface coal mining activities is required by the Act and is coincident with the period for revegetation under Section 515(b)(20). That period is either 5 or 10 years depending upon the average annual precipitation in the area.

The period of liability for underground mining activity in Section 805.13(c) is to be determined by the regulatory authority but such period must not be less than those minimum standards set forth in Section 805.13(c). These standards parallel the basic requirement in the Act for surface coal mining, but require an additional period of time to ensure the success of any facilities or structures installed to meet the requirements of the approved permit (e.g., mine seals).

Comments were received suggesting the bonding period be changed from 5 years to 2 years in the East and from 10 years to 5 years in the West. These comments were not accepted because the Act is quite specific in its requirements for a 5 or 10 year period of liability for surface mining.

Criteria for determining alternative periods of liability for bonding of underground mining were also considered. It was determined that the Act requires bonding to ensure completion of the requirements of Subchapter K rather than the longer periods of 25-50 years which might be required to control subsidence and mine drainage. The alternative considered was to specify periods of time for liability for various underground mining problems such as mine fires subsidence and seals. The Office believes that at this time the regulatory authority will be in a better position to make a determination of a liability period and has therefore only proposed criteria upon which a liability period could be determined.

Section 805.14 provides for an adjustment of the bond amount in relatively restricted circumstances. Section 805.14(a) reflects the fact that a bond amount might very well be changed by an improved method of mining operation or if the permittee has an accelerated program for reclamation. In that case, the amount of area that is potentially affected by surface mining activity or surface effects of underground mining may be substantially less than might be expected for normal surface or underground coal mining activities. This could justify a reduction in the bond amount. This section also requires, as a result of a comment received, that bond amounts be periodically reviewed to determine whether the original amount remains appropriate. This suggestion provides meaning to the Act's requirement that adjustment may occur from "time to time."

Section 805.14(b) places the requirement on the permittee to prove that his activity justifies a reduction in the amount of the bond. Section 805.14(c) also allows a person who has standing to petition for an adjustment in the bond amount. Section 805.14(d) provides for public participation by requiring the regulatory authority to hold and conduct a hearing on any request for reduction in the bond amount.

The major alternative considered was not to allow for a public or permittee petitioning process, but to allow only the regulatory authority to make appropriate adjustments as is provided in Section 509(e) of the Act. This alternative was rejected in favor of the public participation approach reflected in the proposed rule because of a comment the Office received and Congress' stated purpose in Section 102(i) that the Office provide procedures for public participation in the development or revision of standards promulgated under the Act. {41731}

## **PART 806 – FORM, CONDITIONS AND TERMS OF BONDS AND LIABILITY INSURANCE**

Section 806.11(a) provides that there are essentially two forms of performance or indemnity bonds which a regulatory authority can or shall offer. The first form is an indemnity agreement from the permittee, cosigned by a corporation licensed to do business in the State where the operation is located and payable to the regulatory authority.

Section 806.11(a)(2) provides that the bond may also take the form of a collateral bond which is an indemnity agreement executed by the permittee or applicant pledging some negotiable securities such as certificates of deposit, bonds from a State or the United States, or cash.

Section 806.11(b) would also allow a self-bond. In essence, a self-bond is an indemnity agreement from the applicant not supported by a separate surety guarantee or by pledge of collateral. It is a contractual promise by the permittee that he will pay a sum certain if the permittee fails to comply with the requirements imposed upon his operation for reclamation and performance. Four requirements are proposed before an applicant can qualify for self-bonding. The first comes from the Act and provides that the applicant must designate a suitable agent to receive service of process. The second requirement is that an applicant demonstrate a history of compliance with this Act and his ability to comply by not having forfeited a performance bond; by not having failed to abate outstanding notices of violation or orders of cessation; by not having demonstrated a pattern of willful violations of the Act; or by not being delinquent in payment of either the reclamation fee required under Subchapter R or a civil penalty assessment under Part 845.

The major alternative considered for criteria to demonstrate a history of compliance with the Act was a system of accumulated civil penalty points over a 10 year period. This approach was rejected because the time period was burdensome and the Office would not be legally justified in requiring States to have a civil penalty points system. It is the Office's view that the Act intends that an operator demonstrate more than a simple financial ability to pay the bond should it have to be forfeited. The Act contains a provision, in Section 509(c), providing that the operator shall have demonstrated a continuous operation sufficient for authorization to self bond. Proof of continuous operation prior to this Act is not indicative of the fact that the operator can in all respects comply with the Federal Act. Congress did not intend that continued existence prior to the Act to demonstrate sufficiency for self bonding. Legislative intent may be viewed as relating to continued existence of a coal mine operator under and pursuant to this Act. That view then, justifies the requirement that the applicant must demonstrate a history of compliance with the requirements of this Act before he qualifies for self-bonding. Self-bonding, if it is not properly regulated, may result in a break of the chain of liability that flows from the moment of permit application until completion of the permit reclamation which, if not carefully regulated, may allow unqualified operators or operators that have no intention whatever of complying with the requirements of the Act to escape the ultimate penalty provided in the law – the forfeiture of the bonds. No time period is specified for demonstrating a history of compliance because this will vary from State to State and operator to operator. However, the Office intends to look at an applicant's compliance record in terms of the criteria in Section 806.11(b)(2) from the beginning of an applicant's responsibility under the Act.

Section 806.11(b)(3) proposes that the applicant must demonstrate a net worth certified by a certified public accountant of no less than twice the total amount of bond obligation on permits issued. The Act provides for a demonstration by the operator of his financial ability to support a promise to pay.

The final requirement for self-bonding in Section 806.11(b)(4), is that the indemnity agreement must be executed by the applicant and those individuals with responsibility for the mining operation, whether it is a corporation, partnership, individual or any other form of ownership. The purpose of this subsection is to bind in this bond agreement not only the applicant but also all those individuals that might have a personal stake or personal authority to make decisions relating to whether or not the applicant does ultimately comply with the Act. If all of the relevant individuals sign, not only in their corporate or partnership capacity, but in their individual capacity as well, there is a tremendous incentive upon all operators who do manage to qualify for self-bonding to comply to the fullest extent with the requirements of the Act.

The alternative of just having an indemnity agreement signed only by a corporate applicant or a partnership is unacceptable in that the liability would only flow to the corporation or the partnership which can be dissolved rather quickly,

thereby leaving the regulatory authority without an effective remedy to cover the costs of unfinished reclamation work. In such a case there would be no assets to forfeit and the regulatory authority would be left with no effective remedy against a defaulting operator. {41732}

Section 806.11(c) implements the Act's requirement in Section 509(c) that the Office approve alternative bonding systems. Any alternative system must meet at a minimum the two main goals of a bonding program. The first goal is to assure that the regulatory authority will have available, in the event of forfeiture, sufficient money to complete the reclamation requirements. Second, a bonding system must provide a substantial economic incentive for the permittee to comply with all reclamation requirements. Either a surety bond or a collateral bond makes the liability for which the operator may ultimately be responsible a significant incentive for him to comply with the Act. In self-bonding, the requirement that the indemnity agreement provide joint and several liability for all individuals involved in a particular operation gives them all a significant incentive to comply with the Act. The Office invites comments on alternative bonding methods to those proposed. In suggesting alternatives, attention should be directed to specific feasibility studies or risk analyses for each alternative. The office will consider all suggestions in formulating a final rule.

Section 806.12 contains the terms and conditions for bonds. Particular attention should be paid to the requirements for surety bonds which were drafted to prevent any abuse in the system that may leave the regulatory authority without an effective remedy.

Section 806.12(e) contains a number of special conditions which ought to be imposed on surety bonds. The first major requirement is that the bond written by a surety company shall not be cancelable at any time by the surety for any reason, particularly an alleged nonpayment of premium by the operator or for an alleged bankruptcy by the operator. The reason for accepting a surety's co-guarantee is that even if the operator fails in business the regulatory authority will be able to look forward to a financially stable and secure co-guarantor of the bond for purposes of collection at the time of bond forfeiture. In accepting a surety company as a guarantor of a bond the regulatory authority has a right to expect that the promise will be good for as long as the applicable period of liability established for the particular mining activity involved.

The second major restriction on surety bonds relates to the maximum single obligation. In Pennsylvania, the maximum single obligation is defined as ten percent of the capital surplus account. A standard based on the capital surplus account is an indication of the liquid assets of a surety company. Most States do have a maximum single obligation applicable to surety companies in order to assure that a surety company does not engage in the practice of writing bonds grossly in excess of their ability to pay if there is a default. This Section has been drafted to reflect the fact that some States might have other requirements in terms of a maximum single obligation, or might not have any requirement, in which case the ten percent amount would be applicable.

The third major restriction on surety bonds is a requirement that a surety company not write bonds in excess of three times the maximum single obligation for any particular operator. If a company were allowed to write bonds for many permit areas on behalf of a single operator in excess of this amount the surety company would almost surely declare bankruptcy or declare liquidation if operator failed. It should be noted that when an operator fails on one permit, the operator may also default on every bond obligation at every permit site because failures are usually related to a failure in business, bankruptcy or the death of the principle. It seems clear that the total amount of a bond obligation that might be assessed upon default against a particular surety company, if it is not limited to some reasonable amount as proposed, might very well overwhelm the surety and force it into bankruptcy. Such an occurrence would not adequately protect the regulatory authority's need to provide a safe source of funds should an operator fail. In Pennsylvania, 5 surety companies in the last ten years have gone into bankruptcy because they wrote excessive surface mining surety bonds which, when forfeited, rendered them incapable of meeting their other obligations.

Section 806.12(e)(4) was added to allow the regulatory authority to provide in the bond that the amount of the bond shall be confessed to judgment upon forfeiture if confession of judgment is authorized by State law. This will allow the regulatory authority to collect the forfeiture amount without a separate legal proceeding to obtain judgement on the bond amount.

Section 806.12(e)(5) provides that the surety and the permittee or applicant be jointly and severally liable so that the regulatory authority can seek collection of the bond against either or both of these parties.

Section 806.12(f) proposes conditions for collateral bonds. The first requirement, in Section 806.12(f)(1), is that the regulatory authority keep custody of all collateral pledged by the operator. Without possession, the pledge of collateral may be nothing more than a hollow promise at the time of forfeiture.

The second requirement on collateral bonds is that the collateral or securities be valued at current market value and not face value. Bonds may be discounted or otherwise have different values not at all related to the face value of the collateral. In order to properly assess the value of a bond related to the amount required, it is necessary to value it at the current market.

The third requirement relates to certificates of deposit and provides that such certificates of deposit must be assigned to the regulatory authority upon the books of the bank issuing such certificates. The assignment on the books of the bank is essential in order to validate the regulatory authority's control over the certificate, not merely for bond forfeiture but also to protect it against third-party creditors which might try to attach or seek to attach such collateral deposited with the regulatory authority.

The fourth requirement on collateral bonds is that certificates of deposit shall not exceed individual certificates in the amount of \$40,000. The \$40,000 was selected because it is the maximum amount insured by FDIC or by FSLIC.

The fifth limitation requires that banks issuing such certificates of deposit waive all rights of set off or liens against the certificates. Under banking law, the bank does have a right of set off against certificates unless it is waived. In most circumstances an operator will go to a bank from which it has borrowed money to purchase these certificates of deposit in order to do business with one bank. If the bank fails to waive its right of set off or its right to a lien, they may well maintain a prior right upon the forfeiture of an operator because of a failure in business. In most circumstances, the inability of an operator to pay creditors would leave the bank in first position to take the certificates. The regulatory authority must always be in first position to take the certificates upon default and not subject to any other prior creditor claims.

The sixth requirement for collateral is that certificates of deposit be automatically renewable. This is simply a practical requirement. Some certificates may provide for maturity terms as little as 6-months or a year or for as long as 8 years. If the regulatory authority does not get automatically renewable certificates it would be necessary for it to keep passing back and forth certificates, getting new ones, at every point of maturity. The constant churning of these certificates would be an intolerable administrative burden. {41733}

Section 806.12(f)(7) is the final limitation and provides that the regulatory authority will take in a sufficient amount of certificates to assure that the bonds can be liquidated for 100 percent of the declared bond amount. One of the implicit limitations on certificates of deposit is the requirement by the Federal Reserve that a penalty be assessed against such certificates of deposit for early withdrawal prior to maturity. This penalty is a ninety-day amount of interest that would otherwise be earned by the certificate. If a certificate is cashed prior to maturity, the bond or certificate could be valued, because of the penalty, between 92% and 95% of its face value.

Section 806.13 is drafted to permit replacement of bonds with other acceptable forms, provided that no operator may replace existing surety or collateral bonds with a self-bond. A self-bond provides substantially less proof or guarantee of payment. Collateral bonding is substantially superior since the regulatory authority already has the cash or value within its possession and need not go through a court proceeding to obtain collection. Although this section does not reflect it, it may be important to require that a company or operator that is subject to enforcement action, not be allowed to exchange collateral bonding for surety bonding while the action is pending. The Office invites comments on such a proposal or similar proposals that may afford additional protection to the regulatory authority.

Section 806.14 provides the terms and conditions for liability insurance. Minimum amounts for coverage are provided although the articulated standard in Section 806.14(a) is that coverage shall be "in an amount adequate to compensate all persons injured on property damaged as a result of surface coal mining and reclamation operations . . ." The alternative considered was not to include minimum amounts because the Act does not speak to this issue. However, the Office believes that minimum coverage, based on prevailing liability insurance practice, should be included to provide a guideline for the regulatory authority. One commenter suggested that the minimum amount for liability coverage should be tied to the highest total amount ever awarded or settled upon as damages to tort claimants for personal or property damage resulting from surface coal mining and reclamation operations. This was considered to be too burdensome. The Office is interested in receiving comments regarding the inclusion of such minimum amounts and, if inclusion is warranted, what minimum amounts should be provided. {41733}

## **PART 807 – PROCEDURES, CRITERIA AND SCHEDULE FOR THE RELEASE OF BONDS**

Part 807 proposes procedures for the release of bond.

Section 807.11(c) from earlier drafts was rewritten as new paragraphs (c) and (d) to more closely follow the requirements

of Sections 519 (b) and (d) of the Act.

Section 807.11(e) refers to hearings for bond release according to State administrative law not State adjudicatory law to clarify that these proceedings are administrative rather than judicial. Section 807.11(e) was also re- written from previous drafts to change the name of the informal hearing to informal conference which is what the Act provides. One commenter suggested that election of an informal proceeding should not prejudice the rights of non-consenting parties. This comment was accepted because Section 519(g) of the Act indicates that such a provision was intended.

It should be noted that the use of the phrase ""any person with a valid legal interest which might be adversely affected" has been defined in Section 701.5 of this chapter to encompass the concept of legal standing to participate in adjudicatory proceedings. This phrase has been construed as broadly as possible while adhering to the legal principles enunciated by the Supreme Court of the United States.

Section 807.12 provides for criteria for bond release. The major requirement is that no bond shall be released until the permittee has complied with all the applicable requirements and standards for reclamation and has met all the conditions of its permit. The second requirement for release of bonds is that the regulatory authority retain, at all times up until final completion and final release of all bonding, at least \$1 0,000 in bond amount and such additional amounts as may be determined by the regulatory authorities to be necessary to cover the costs of remaining reclamation to be done. This requirement is supported by the Act which provides for a minimum bond of not less than \$1 0,000 thereby indicating a Congressional intent to require at least \$1 0,000 to be maintained at all times by the regulatory authority until release is accomplished.

Section 807.13 proposes a release schedule for performance following the requirements of Section 519(c) of the Act. Two additions have been proposed. First, after revegetation has been established, an additional 25% of the bond may be released, for a total of 85% to that point in the reclamation effort. One commenter suggested this was too high a percentage of release at that point in time to provide the economic incentive necessary to an operator to complete reclamation. Moreover, if the operator did not complete reclamation, the regulatory authority would be left with an inadequate amount to complete the reclamation plan. Comments on the merits of either approach are invited.

Second, the Office proposes, in paragraph (c), to hold at least \$1 0,000 of a bond regardless of an operator's eligibility for release under paragraphs (a) and (b). This approach is consistent with other requirements of this subchapter and Section 509(a) of the Act. {41733}

## **PART 808 – PERFORMANCE BOND FORFEITURE**

Part 808 proposes those provisions for determining bond forfeitures.

Section 808.11 provides the general provisions for determining bond forfeitures and expresses those conditions which will require the regulatory authority to forfeit the bonds. This Section proposes those conditions for which a bond forfeiture is mandatory and those conditions for which forfeiture is discretionary.

Section 808.11 provides general conditions upon which a bond forfeiture might occur or shall occur for failure to comply with the applicable performance standards, or for violating any other condition of the bond. A proviso was added in Section 808.11(b) that the regulatory authority may withhold forfeiture if the permittee agrees to a compliance schedule to remedy the violations of the bond conditions. It is always desirable to get the permittee to comply with his reclamation plan if it is at all possible because the cost to the public if it had to do it is usually in excess of what it would cost a permittee. Moreover, reclamation by the regulatory authority may be delayed for many years for a variety of reasons relating to collection upon the bond or contracting requirements to accomplish the reclamation. Therefore, this section as proposed, provides an incentive for the operator to come forward and agree to a compliance schedule, allowing the regulatory authority to engage in that option rather than compelling it to go to forfeiture.

Section 808.12 specifies procedures which the regulatory authority shall engage in prior to bond forfeiture. These procedures for bond forfeiture simply provide that the regulatory authority send written notification to the permittee and, if it is a surety bond to the surety, of the determination to forfeit and the reasons for such forfeiture.

The Section also requires the regulatory authority to advise the permittee of such rights of appeal that might be available. If no appeal is filed or if an appeal is dismissed, the regulatory authority may proceed with the collection upon the bond as may be provided by applicable local laws. A forfeiture under this section by the regulatory authority is a final decision by the

authority, not appealable within the agency or otherwise, except as provided by applicable State or Federal law for such administrative actions. {41734}

Finally, this section requires that if an appeal is filed the regulatory authority will defend such action or perhaps reach some kind of compromise with the operator to assure that the required reclamation is performed. An additional requirement was added in Section 808.12(c) that the regulatory authority may forfeit any or all of the bonds or part of bonds deposited for an entire permit area in order to satisfy the obligations of reclamation for a violation at any one particular area or part of an area. This approach will insure the regulatory authority against being caught with a bond of insufficient amount to satisfactorily complete reclamation in an area because the bond was not properly calculated or adjusted. This approach will also help to eliminate economic or business factors from encouraging an operator to abandon a particular site before all work is completed.

Section 808.13 provides criteria for forfeiture. It identifies three areas where forfeiture would be mandatory and other conditions where forfeiture may be involved. The first set of requirements where the bond forfeiture is required are standard. In those three circumstances the bond shall be forfeited because the permittee has indicated an inability to comply with the Act in a major respect, unless it is possible to reach some compliance agreement and schedule with the operator. It may be appropriate to provide that the regulatory authority issue a notice of intent to forfeit in order to allow the mine operator to come forward with a compromise agreement of compliance. Only in the case of a total business failure or death of the principle of the operator will there be no way to effectively reach a compliance agreement. The Office invites comments on whether such a notice of intent should be provided as well as other criteria for triggering a bond forfeiture proceeding.

Section 808.13(b) provides for a permissive declaration of forfeiture of a bond. These provisions reflect problems that have occurred in Pennsylvania. They are indicative of a business failure and the inability of the permittee to comply with the Act. A provision was added so that a permissive bond forfeiture can occur if the permittee cannot demonstrate or prove that it will be able to operate in compliance with the Act. Such a provision operates to place the burden on the permittee to prove that he can comply with the Act although either of the conditions in paragraphs (b)(1) or (b)(2) have occurred. If he can prove continued compliance with the Act, then forfeiture is unlikely. If he cannot make the required showing, the regulatory authority is likely to forfeit the bond. The event of a bond forfeiture gives the regulatory authority a certain amount of leverage to compel some successor in interest, such as a receiver in bankruptcy, to comply with the legal requirements imposed upon the permittee for the operation.

Section 808.14 is a statement of the two bases for determining the forfeiture amount. Section 808.14(a) is simply a general statement that the amount shall be the estimated actual cost to the regulatory authority or its contractor to complete the reclamation plan. Section 808.14(b) provides a different mechanism that may be of greater practical benefit to the regulatory authority when it must act expeditiously. This section allows the regulatory authority to forfeit the entire amount of the bond to which liability is attached, complete the required reclamation, and then return the remaining amount with interest to the surety or to the permittee. {41734}

## **PART 809 – BONDING AND INSURANCE REQUIREMENTS FOR ANTHRACITE SURFACE COAL MINING AND RECLAMATION OPERATIONS**

This Part sets forth the general requirements for bonding and insuring anthracite surface coal mining and reclamation operations for states which regulated anthracite coal mining by having environmental protection standards in existence as of August 3, 1977. Section 529 of the Act, from which the authority for this Part is derived, is believed to only cover, and thereby exempt, Pennsylvania from certain provisions of the Act and this Chapter. As a result, this Part is only applicable to persons engaging in or seeking to engage in anthracite surface coal mining and reclamation operations in Pennsylvania.

Section 809.12 proposes the requirements for bonding and insuring anthracite coal mining operators in Pennsylvania. Basically, Section 529(a) of the Act requires that all anthracite operations be subject to the general bonding provisions, except for the period of revegetation responsibility and bond limits. In those cases, Pennsylvania law, regulations and administrative guidelines will apply. Section 809.12(a) simply provides the statutory exemption and directs the Pennsylvania regulatory authority to apply its laws, regulations, and guidelines to bonding limits and liability periods for anthracite operations.

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{Regulations: 43 FR 41867}

## **SUBCHAPTER J – BOND AND INSURANCE REQUIREMENTS FOR COAL SURFACE MINING AND RECLAMATION OPERATIONS**

### **PART 800 – GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND OPERATIONS UNDER STATE AND FEDERAL PROGRAMS**

#### Section

800.1	Scope.
800.2	Objective.
800.11	Requirement to file a bond.
800.12	Requirement to file a certificate of liability insurance.
800.13	Regulatory authority responsibilities.

Authority: Sections 102, 201(c), 501(b), 507, 509, and 519, Pub. L. 95 87, 91 Stat. 448, 449, 468, 474, 477, 479, and 501 (30 U.S.C. 1201, 1211, 1251, 1257, 1259, and 1269).

#### **SECTION 800.1 - SCOPE.**

This Part sets forth the minimum requirements for bonding and insuring surface coal mining and reclamation operations on non-Indian and non-Federal lands under a State program or a Federal program adopted in a State.

#### **SECTION 800.2 - OBJECTIVE.**

The objective of this Part is to set forth the minimum requirements and responsibilities for filing bonds and insurance in accordance with the Act.

#### **SECTION 800.11 - REQUIREMENT TO FILE A BOND.**

(a) After a coal mining and reclamation permit application has been approved but before a permit is issued, the applicant shall file with the regulatory authority a bond for performance payable to the regulatory authority. The performance bond will be conditioned upon the faithful performance of all the requirements of the Act, the regulations of this Chapter, or a State or Federal program, the rules and regulations issued under a State or Federal program and the provisions of its permit. The amount, duration, form, conditions and terms of the performance bond shall conform to Parts 805 and 806 of this Subchapter.

(b) The initial bond shall cover liability for the area of land to be affected within the first year of conducting surface coal mining and reclamation operations under the permit. Incremental bonds for 1-year periods within the term of the permit shall be filed with the regulatory authority on or before 30 days before beginning additional surface coal mining and reclamation operations.

(c) The amount, duration, form, conditions and terms of the performance bond shall conform to 30 CFR 805 and 806.

#### **SECTION 800.12 - REQUIREMENT TO FILE A CERTIFICATE OF LIABILITY INSURANCE.**

(a) Each applicant for a permit shall submit to the regulatory authority, as part of the permit application, a certificate issued by an insurance company authorized to do business in the United States. The certificate shall certify that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which the permit is sought. The amount, duration, form, conditions and terms of such insurance shall conform to 30 CFR 806.

(b) The applicant may, instead of purchasing liability insurance, submit evidence that it satisfies applicable State or Federal self-insurance requirements and that self-insurance for liability is otherwise consistent with 806.14.

## **SECTION 800.13 - REGULATORY AUTHORITY RESPONSIBILITIES.**

- (a) The regulatory authority shall prescribe and furnish the form for filing a performance bond.
- (b) The regulatory authority shall prescribe terms and conditions for bonds and insurance by regulation. The regulatory authority shall meet, at a minimum, those provisions of 30 CFR 805 and 806.
- (c) The regulatory authority shall determine the amount of the bond required for each part of the permit area to be bonded, including adjustments to the initial amount from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes, according to the minimum requirements of 805.11(a).
- (d) The regulatory authority may accept the bond of the applicant in lieu of a surety or collateral bond if the applicant meets the requirements of 806.11(b).
- (e) The regulatory authority shall release the permittee from his bond and insurance requirements consistent with 807.11, 807.12, and 807.13(a).
- (f) The regulatory authority shall cause all or part of a bond to be forfeited consistent with 30 CFR 808. {41867}

## **PART 805 – AMOUNT AND DURATION OF PERFORMANCE BOND**

### Section

805.1	Scope.
805.11	Determination of bond amount.
805.12	Minimum amount.
805.13	Period of liability.
805.14	Adjustment of amount. {41868}

Authority: Sections 102, 201(c), 501(b), 509, and 515, Pub. L. 95 87, 91 Stat. 448, 449, 468, 479, and 491 (30 U.S.C. 1201, 1211, 1251, 1259, and 1265).

## **SECTION 805.1 - SCOPE.**

This Part sets forth the minimum requirements for determining the amounts of performance bonds and the time periods of liability for surface coal mining and reclamation operations.

## **SECTION 805.11 - DETERMINATION OF BOND AMOUNT.**

- (a) The standard applied by the regulatory authority in determining the amount shall be the estimated actual cost to the regulatory authority if it had to perform the reclamation, restoration and abatement work required, under the Act, the regulations of this Chapter, or a State or Federal program, all regulations promulgated under that State or Federal program and the provisions of the permit.
- (b) The amount of a bond required for each permit area, or increments within these areas, shall be determined by the regulatory authority and based upon but not limited to the following:
  - (1) The estimated cost to the regulatory authority of completing the reclamation plan, the performance standards in 30 CFR 810 828 and the approved permit;
  - (2) In determining the estimated cost for underground coal mining operations, the following criteria shall be used in addition to those in 805.11(b)(1):
    - (i) Estimated cost of replacement of ponds and stream linings; and
    - (ii) Estimated cost of repair to structures and facilities within the permit area based on history of damage, incidence and repair costs within the region;

- (3) The additional cost to the regulatory authority which may arise from applicable public contracting requirements or the requirement to bring personnel and equipment to the permit area after abandonment by the permittee;
- (4) All costs necessary, expedient and incident to the satisfactory completion of the requirements of the permit and the performance standards in Subchapter K of this Chapter;
- (5) A factor based on cost increases during the preceding 5 years for the types of activities or costs associated with the reclamation to be performed; and
- (6) Such other cost information that may be acquired by the regulatory authority.

#### **SECTION 805.12 - MINIMUM AMOUNT.**

(a) The amount of the bond for surface coal mining and reclamation operations shall, at a minimum, be sufficient to assure performance of all the requirements of the Act, the performance standards of 30 CFR 810 828 or a State or Federal program, all regulations under a State or Federal program and the provisions of the permit if the work had to be performed by the regulatory authority in the event of forfeiture.

(b) The bond for surface coal mining and reclamation operation shall not be less than \$10,000 for the entire area under one permit.

#### **SECTION 805.13 - PERIOD OF LIABILITY.**

(a) All coal mining operations. At a minimum, liability under a bond shall continue until all reclamation requirements of the Act, this Chapter and the provisions of the permit have been met.

(b) Surface coal mining activities. In addition to the requirement of paragraph (a) of this section, liability under the bond for revegetation shall continue for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation, or other work required under the performance standards of 30 CFR 810 828 which has achieved compliance with the standards for successful revegetation under 30 CFR 816.55(f), where the average annual precipitation is more than 26 inches or for 10 years where the average annual precipitation is 26 inches or less:

(1) If the regulatory authority approves a long-term intensive agricultural postmining land use in accord with the performance standards of 30 CFR 810 828, the applicable 5- or 10-year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use.

(2) The regulatory authority may, upon a written finding approving a long-term intensive agricultural land use, grant an exception to the revegetation requirements of 30 CFR 816, but shall not grant exception to the period of liability in 805.13 (a) or (b).

(c) Underground coal mining activities. The period of liability for an underground mine shall continue for a sufficient period to ensure that the requirements of the reclamation plan and approved permit have been successfully met. The regulatory authority shall determine the duration of bond liability based on:

- (1) The life of the mine,
- (2) The period of time to install any facilities or structures to meet the requirements of the approved permit; and
- (3) A period of time to ensure the success of any facilities or structures installed to meet the requirements of the approved permit.

#### **SECTION 805.14 - ADJUSTMENT OF AMOUNT.**

(a) The amount of the bond shall be adjusted by the regulatory authority as surface or underground affected area under the permit is increased or decreased, methods of mining operation change, standards of reclamation change, or when the cost of future reclamation changes. The regulatory authority shall notify the permittee of any proposed bond adjustment and provide the opportunity for an informal conference. The regulatory authority shall review each outstanding bond at the time that permit reviews are conducted under 30 CFR 790.3, and re-evaluate those bonds in accordance with the standards in 805.11.

(b) A permittee may request reduction of the required bond amount upon production of evidence submitted to the regulatory authority proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the regulatory authority to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount.

(c) Any person with a valid legal interest which may be affected by adjustment of the bond or the continued operation of surface coal mining and reclamation operation currently under bond may petition the regulatory authority to alter the bond amount by the submission of evidence that the bond may be insufficient and that review of the bond is warranted. I11(d) Upon receipt of a request for reduction or petition for adjustment, the regulatory authority shall hold a hearing, after notice in a newspaper serving the locale of the bonded area for which an adjustment is sought, providing the permittee and persons whose interests are or may be adversely affected an opportunity to comment on the request. The regulatory authority shall notify the permittee and participants at the hearing of its decision within 30 days from the close of the hearing.

(e) The notice shall be in writing, stating the reasons for the decision and informing the permittee or any person whose interests may be adversely affected by the decision and who participated in the hearing of any rights of appeal. {41868}

## **PART 806 – FORM, CONDITIONS AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE**

### Section

806.1	Scope.
806.11	Form of the performance bond.
806.12	Terms and conditions of the bond.
806.13	Replacement of bonds.
806.14	Terms and conditions for liability insurance. {41869}

Authority: Sections 102, 201(c), 501(b), 507(f) and 509, Pub. L. 95 87, 91 Stat. 448, 449, 468, 477 and 479 (30 U.S.C. 1202, 1211, 1251, 1257, and 1259).

### **SECTION 806.1 - SCOPE.**

This Part establishes the minimum standards for the form of the bond for surface coal mining and reclamation operations, and the terms and conditions applicable to bonds and liability insurance.

### **SECTION 806.11 - FORM OF THE PERFORMANCE BOND.**

(a) The form for the performance bond shall be prescribed by the regulatory authority. The regulatory authority shall offer either of the following forms:

- (1) An indemnity agreement executed by the applicant and a corporate surety licensed to do business in the State where the surface or underground coal mining operation is located and payable to the regulatory authority; or
- (2) An indemnity agreement executed by the applicant and payable to the regulatory authority pledging cash deposits, negotiable bonds of the United States, State or municipalities, or negotiable certificates of deposit of any bank organized or transacting business in the United States, if the applicant so chooses.

(b) Self-bond instead of surety or collateral bond. The regulatory authority may accept an indemnity agreement from the applicant payable to the regulatory authority without separate surety guarantee or pledge of specific collateral, considering the following conditions:

- (1) The applicant shall designate a suitable agent to receive service of process.
- (2) The applicant shall have demonstrated a history of compliance with the Act, the regulations of this Chapter, or a State or Federal program, rules and regulations promulgated thereunder and the conditions of all permits. For purposes of this subparagraph, an applicant shall be unable to demonstrate a history of compliance if the applicant controls or has controlled surface coal mining and reclamation operations that:
  - (i) Have forfeited a performance bond which was posted to insure reclamation of a coal surface mining and reclamation operation;
  - (ii) Have notices of violation or orders of cessation that have not been abated;
  - (iii) Have demonstrated a pattern of willful violations of the Act of such a nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the act as described in 843.13 of this Chapter; or
  - (iv) Are delinquent in payment of either the reclamation fee required under Subchapter R of this Chapter or a civil penalty assessment under 30 CFR, if a State has adopted it as part of its State program, or if the regulatory

authority is the Office.

(3) The applicant has a net worth, certified by a certified public accountant, of no less than twice the total amount of bond obligations on all permits issued to the applicant.

(4)(i) The indemnity agreement shall be executed by the applicant and by:

(A) If the applicant is a publicly held corporation, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions;

(B) If the applicant is a foreign person, the indemnity agreement shall also be signed by its authorized representative in the United States, if any;

(C) Its parent corporation and every parent of which it is a subsidiary, whether first-tier, second-tier, or further removed, if any;

(D) If the applicant is a partnership, all of its general partners and their parents;

(E) If the applicant is a married individual, the applicant's spouse; and

(F) If the applicant is a closely held corporation, all of its principal investors, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions.

(ii) The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the indemnity agreement.

(iii) The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it.

(iv) For purposes of paragraph (4)(b) of this section, principal investor means anyone with a 10 percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(v) For the purposes of paragraph (4), parent means owner, direct or indirect, of a 10 percent or more beneficial interest in the applicant or any corporation, partnership or individual which has a 10 percent or more beneficial ownership in the applicant.

(c) The Secretary may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program:

(1) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation provisions for all permit areas which may be in default at any time; and

(2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

## **SECTION 806.12 - TERMS AND CONDITIONS OF THE BOND.**

(a) The bond shall be in an amount determined by the regulatory authority as provided in 30 CFR 805.11 and 805.12.

(b) The bond shall be payable to the regulatory authority.

(c) The bond shall be conditioned upon faithful performance of all of the requirements of the Act, or State law adopted pursuant to a State regulatory program, the rules and regulations promulgated thereunder and the conditions of the permit and shall cover the permit area.

(d) The duration of the bond shall be for the time period provided in 30 CFR 805.13.

(e) Surety bonds shall be subject to the following conditions: {41870}

(1) The regulatory authority shall not accept a surety company's bond unless it is agreed that the bond shall not be cancellable by the surety at any time during the period of liability, for any reason including non-payment of premium or bankruptcy of the permittee.

(2) The regulatory authority shall not accept a surety company's bond in excess of the company's maximum single obligation as provided by State law in the State where the permit area is located, unless the surety company satisfies State law for exceeding such limit. In States where no maximum single obligation limit is established by State law, the regulatory authority shall not accept surety bonds in excess of 10 percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(3) The regulatory authority shall not accept surety bonds from a surety company for any permittee on all permits in excess of three times the company's maximum single obligation as provided by State law or, in the absence of State law, as provided in paragraph (e)(2) of this section.

(4) The regulatory authority may provide in the bond that the amount shall be confessed to judgment upon forfeiture if such procedure is authorized by State law.

(5) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(f) Collateral bonds shall be subject to the following conditions:

(1) The regulatory authority shall obtain possession of and keep in custody all collateral pledged by the applicant until authorized for release or replacement as provided in this Subchapter.

(2) The regulatory authority shall value collateral at its current market value, not face value.

(3) The regulatory authority shall require that certificates of deposit be assigned to the regulatory authority, in writing, and upon the books of the bank issuing such certificates.

(4) The regulatory authority shall not accept an individual certificate for a denomination in excess of \$40,000.

(5) The regulatory authority shall require the banks issuing such certificates to waive all rights of setoff or liens which it has or might have against such certificates.

(6) The regulatory authority shall only accept automatically renewable certificates of deposit.

(7) The regulatory authority shall require the applicant to deposit sufficient amounts of certificates of deposit to assure that the regulatory authority will be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the bond required by the provisions of this Subchapter.

#### **SECTION 806.13 - REPLACEMENT OF BONDS.**

(a) The regulatory authority may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, provided, however, that the liability which has accrued against the permittee on the permit area shall be transferred to such replacement bonds.

(b) The regulatory authority shall not allow permittees to replace existing surety or collateral bonds with a self-bond provided in 30 CFR 806.11(b).

(c) The regulatory authority shall not release existing bonds until the permittee has submitted acceptable and approved replacement bonds. A replacement of bonds pursuant to this section shall not constitute a release of bond under 30 CFR 807.

#### **SECTION 806.14 - TERMS AND CONDITIONS FOR LIABILITY INSURANCE.**

(a) The regulatory authority shall require the applicant to submit at the time of permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for personal injury shall be \$300,000 for each injury and \$5 00,000 for each accident. Minimum insurance coverage for property damage shall be \$300,000 per accident and \$5 00,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal or extension thereof, including completion of all reclamation and restoration operations under this Chapter.

(c) The policy shall include a rider requiring that the insurer notify the regulatory authority whenever substantive changes are made in the policy, including any termination or failure to renew.

(d) The regulatory authority may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements and the requirements of this section. {41870}

## **PART 807 – PROCEDURES, CRITERIA AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND**

### Section

807.1	Scope.
807.11	Procedures for seeking release of bond.
807.12	Criteria for release of bond.
807.13	Schedule for release of bond.

Authority: Sections 102, 201(c), 501(b), 507(b)(16), 515(b)(8), (10), and (20), and 519, Pub. L. 95 87, 91 Stat. 440, 449, 468, 477, 488, 489, 491, and 501 (30 U.S.C. 1202, 1211, 1251, 1257, 1265, and 1269)

### **SECTION 807.1 - SCOPE.**

This Part sets forth the procedures and criteria for release of performance bonds for both surface and underground coal mining activities. This includes the filing, notice and hearing requirements, and the standards by which the application for release shall be evaluated.

### **SECTION 807.11 - PROCEDURES FOR SEEKING RELEASE OF BOND.**

(a) The permittee may file a request for release of all or part of the performance bond(s) on deposit with the regulatory authority after reclamation and restoration operations under this Subchapter and Subchapter K of this Chapter have been completed:

(1) Bond release applications may only be filed at times or seasons that allow the regulatory authority to properly evaluate the reclamation alleged to have been completed. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the reclamation plan and approved by the regulatory authority.

(2) The bond release application shall include copies of letters sent to adjoining property owners, surface owners, local governmental bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the mine notifying them of his intention to seek release from the bond. These letters shall be sent before the permittee files a request for release of bond.

(b) Within 30 days after filing a request for bond release, the permittee shall advertise the request for release in a newspaper of general circulation in the city or town nearest the mine. A proof of publication of the advertisement shall be submitted to the regulatory authority. The advertisement shall:

(1) Be placed in the newspaper at least once a week for four (4) consecutive weeks;

(2) Show the name of the permittee, including the number and date of the permit;

(3) Show the precise location and the number of acres of the land affected;

(4) Show the total amount of bond in effect and the amount for which release is sought;

(5) Summarize the reclamation and restoration work done, including any back stowing or mine sealing, if applicable, and give the dates of completion;

(6) Describe the reclamation and restoration results achieved as they relate to the approved mining and reclamation plan; and

(7) State that written comments may be submitted to the office of the regulatory authority and provide the address of the office.

(c) The regulatory authority shall inspect and evaluate the reclamation work involved within 30 days after receiving a copy of the newspaper advertisement, or as soon thereafter as weather conditions permit:

(1) The surface owner, agent, or lessee may participate with the regulatory authority in making the bond release inspection.

(2) The regulatory authority shall consider, when making its inspection and evaluation:

(i) Whether the permittee has met the criteria for release of the bond under 807.12 of this Part;

(ii) The degree of difficulty in completing any remaining reclamation;

(iii) Whether pollution of surface and subsurface water is occurring;

(iv) The probability of future pollution or the continuance of any present pollution of surface and subsurface water; and

(v) The estimated cost of abating any pollution. {41871}

(d) If no public hearing is requested under paragraph (e) of this section and the regulatory authority disapproves the application for release of the bond or any portion of it, the regulatory authority shall notify the permittee, in writing, stating the reasons for disapproval consistent with paragraph (c) of this section:

(1) The notice shall recommend corrective actions necessary to secure release of the bond. The notice shall also provide the permittee with an opportunity for a public hearing before the regulatory authority:

(i) If the permittee requests a public hearing, the regulatory authority shall publish notice in the Federal Register or the official State publication, whichever is applicable. The notice shall advertise the date, time and location in the newspaper of general circulation in the locality of the area under bond for which release is sought.

(ii) The hearing shall be held within thirty (30) days of the request in the town or city nearest the area under bond for which release is proposed.

(iii) The hearing shall be legislative in type and conform to the applicable requirements of 5 U.S.C. Section 553 if the regulatory authority is the Office, or the applicable requirements of State law governing administrative hearings if the regulatory authority is the State.

(iv) The regulatory authority shall conduct the hearing and allow all participants an opportunity to comment on the disapproval.

(2) If a public hearing is held at the request of the permittee following disapproval of its request, the permittee shall have the burden of presenting a preponderance of evidence to persuade the regulatory authority that its decision disapproving the request cannot be supported by the reasons given.

(e) Written objections to the proposed bond release and a request for a public hearing may be filed with the regulatory authority by affected persons within thirty (30) days of the last advertisement of the bond release. Affected persons are:

(1) Any person with a valid legal interest which might be adversely affected by bond release; and

(2) The responsible officer or head of any Federal, State or local government agency which:

(i) Has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved; or

(ii) Is authorized to develop and enforce environmental standards with respect to surface or underground coal mining.

(f) (1) If written objections are filed and a public hearing is requested the regulatory authority shall schedule a public hearing. The regulatory authority shall:

(i) Inform the permittee, local government and the objecting party of the time and place of the hearing;

(ii) Publish notice in the Federal Register or the official State publication and advertise the date, time, and location in a newspaper of general circulation in the locality of the mine twice a week for two (2) consecutive weeks before the hearing; and

(iii) Hold the public hearing within thirty (30) days of the request in the town or city nearest to the area under bond for which release is sought or the State capital, at the option of the objector.

(2) The regulatory authority may subpoena witnesses, and written and printed materials; and compel attendance of witnesses and production of the materials for a hearing. A verbatim record of each public hearing shall be made and the transcript made available on the motion of any party or by order of the regulatory authority.

(3) The hearing, if requested, shall otherwise conform to the applicable requirements of 5 U.S.C. Section 554 if the regulatory authority is the Office, or to the applicable requirements of the State law governing administrative hearings if the regulatory authority is the State.

(g) The applicant and any of the objecting parties may agree to an informal conference to resolve such written objections instead of the hearing under paragraph (e) of this section. The informal conference shall be held in the locality of the permit area for which bond release is sought. The decision to conduct an informal conference shall not prejudice the right of any objecting party who has not agreed to the informal conference instead of a hearing to demand a formal hearing under paragraph (f) of this section:

(1) Notice of the informal conference shall be published in the Federal Register or the official State publication, and a newspaper of general circulation in the locality of the scheduled conference at least two weeks before the conference date.

(2) The informal conference shall be held 30 days from the date of notice.

(3) An electronic or stenographic record shall be made of the conference and the record maintained for access by the parties until final release of the bond unless recording is waived by the parties.

(h)(1) The regulatory authority shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the filing of the request, if no public hearing or conference has been held.

(2) If there has been a public hearing or conference held, the notification shall be made to all interested parties within thirty days after conclusion of the conference.

(3) A notice of disapproval shall state reasons for the disapproval, recommend corrective actions necessary to secure the release and notify the applicant of his right to appeal the decision of the regulatory authority.

(4) A notice of approval shall state the reasons for approval and notify interested parties of their right to appeal the decision of the regulatory authority:

(i) The regulatory authority shall notify the town or city nearest to and the county in which the operation is located by certified mail at least thirty (30) days prior to release of all or part of the bond.

#### **SECTION 807.12 - CRITERIA FOR RELEASE OF BOND.**

(a) The regulatory authority shall not release the bond or any part of it under 807.13 until it finds that the permittee has met the applicable performance standards under 30 CFR 810 827 for the surface coal mining and reclamation operation, the requirements of its permit and the approved State program.

(b) The regulatory authority shall, at all times until final completion of the permittee's obligations under paragraph (a) of this section and final release of all bonding, retain at least \$1 0,000 in bond amount, and such additional amounts determined by the regulatory authority to be necessary to:

- (1) Cover the cost of uncompleted reclamation operations; and
- (2) Other uncompleted requirements of the permit, the Act or this Chapter.

#### **SECTION 807.13 - SCHEDULE FOR RELEASE OF BOND.**

The regulatory authority may release the bond or deposit for the area of land affected within each year of the permit term according to the following schedule:

(a) Sixty (60) percent of the bond may be released when the permittee completes backfilling, topsoil replacement, regrading and drainage control of the bonded area in accordance with the approved mining and reclamation plan.

(b) After revegetation has been established according to the approved mining and reclamation plan and the standards for measuring the success of revegetation are met, the regulatory authority may release an additional twenty-five (25) percent of the bond. No part of this remaining portion of bond may be released:

(1) As long as the lands are contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements in section 515(b)(10) of the Act and 30 CFR 816.49(b); {41872}

(2) Until soil productivity on prime farmlands is returned to equivalent levels of yield for non-mined prime farmland in the surrounding area under equivalent management practices as determined from the soil survey performed under section 507(b)(16) of the Act; and

(3) Unless satisfactory provision in the approved mining and reclamation plan is made for the sound future maintenance by the operator or land-owner of any permanent impoundment, which provision is also authorized by the regulatory authority.

(c) The regulatory authority shall not partially release the bond as provided in this section if the remaining bond amount will fall below \$10,000.

(d) The regulatory authority shall release the remainder of the bond when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved mining and reclamation plan, the requirements of this Subchapter and 30 CFR parts 810 827 and the applicable liability period under paragraph (a) of this section has expired. {41872}

## **PART 808 – PERFORMANCE BOND FORFEITURE CRITERIA AND PROCEDURES**

### Section

808.1	Scope.
808.11	General.
808.12	Procedures.
808.13	Criteria for forfeiture.
808.14	Determination of forfeiture amount.

Authority: Sections 102, 201(c), 501(b), 509(a), and 519, Pub. L. 95 87, 91 Stat. 448, 449, 468, 480, and 501 (30 U.S.C. 1202, 1211, 1251, 1259, and 1269).

### **SECTION 808.1 - SCOPE.**

This Part sets forth the criteria and procedures applicable whenever the regulatory authority initiates a proceeding for the forfeiture of a bond or any part of a bond as a result of the permittee's failure to meet the conditions upon the bond.

### **SECTION 808.11 - GENERAL.**

(a) The regulatory authority shall forfeit all or part of a bond for any permit which:

- (1) Has not been mined, reclaimed and restored consistent with applicable performance standards of 30 CFR 810 827, the approved reclamation plan, and requirements of the permit; or
- (2) Is in violation of any other condition upon the bond.

(b) The regulatory authority may withhold forfeiture if the permittee agrees to a compliance schedule to comply with the violations of the permit or bond conditions.

### **SECTION 808.12 - PROCEDURES.**

(a) In the event forfeiture of the bond is required by 808.11, the regulatory authority shall:

- (1) Send written notification to the permittee, and the surety on the bond, if applicable, of the regulatory authority's determination to forfeit all or part of the bond and all reasons for such forfeiture, including a finding of the amount to be forfeited;
- (2) Advise the permittee of any rights of appeal that may be available for that determination under local law if the regulatory authority is the State, or under Federal law, if the regulatory authority is the Office; and
- (3) If an appeal is not filed within a time established by the regulatory authority or is unsuccessful, proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section for the amount of the estimated actual costs to the regulatory authority to carry out the performance standards and reclamation requirements for a surface or underground coal mining operation; and
- (4) If an appeal is filed, defend the action.

(b) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the regulatory authority.

(c) The regulatory authority may forfeit any or all bond deposited for an entire permit area in order to satisfy the obligations of section 808.11 and Section 808.14.

### **SECTION 808.13 - CRITERIA FOR FORFEITURE.**

(a) A bond shall be forfeited if the regulatory authority finds that:

- (1) The permittee has violated any of the terms or conditions of the bond; or
- (2) The permittee has failed to conduct the surface mining and reclamation operation in accordance with the Act, the conditions of the permit within the time periods required by the approved reclamation plan, the State or Federal program, the regulations issued under a State or Federal program or required by the approved reclamation plan; or

(3) The permit for the area under bond has been revoked.

(b) A bond may be forfeited if the regulatory authority finds that:

(1) The permittee has become insolvent, failed in business, filed a petition in bankruptcy or for a receiver, or had a petition in bankruptcy or for a receiver filed against it in any court; or

(2) A creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area or on the collateral pledged to the regulatory authority; and

(3) The permittee cannot demonstrate or prove that it will be able to continue to operate in compliance with the Act.

#### **SECTION 808.14 - DETERMINATION OF FORFEITURE AMOUNT.**

The regulatory authority shall either:

(a) Determine the amount of the bond to be forfeited on the basis of the estimated actual cost to the regulatory authority or its contractor to complete the reclamation plan and other regulatory requirements in accordance with the Act, the regulations of this Chapter, a State or Federal program, and the rules and regulations issued under a State or Federal program, and the requirements of the permit; or

(b) Forfeit the entire amount of the bond for which liability is outstanding, deposit the proceeds thereof in an interest-bearing escrow account for use in the payment of all costs and administrative expenses associated with the completion of reclamation by the authority. Following completion of reclamation by the regulatory authority, the principal balance and accrued interest remaining in the account shall be returned. {41872}

#### **PART 809 – BONDING AND INSURANCE REQUIREMENTS FOR ANTHRACITE SURFACE COAL MINING AND RECLAMATION OPERATIONS**

Section

809.1	Scope.
809.2	Objective.
809.3	Responsibilities.
809.11	Applicability.
809.12	Requirements.

Authority: Sections 102, 201(c), 501(b), 507(f), 507(b)(16), 509, 515(b)(8) and (10), 519 and 529, Pub. L. 95 87, 91 Stat. 445, 449, 468, 477, 479, 488, 489, 501 and 514 (30 U.S.C. 1202, 1211, 1251, 1257, 1259, 1265, 1269 and 1279).

#### **SECTION 809.1 - SCOPE.**

This Part sets forth the applicability and general requirements for bonding and insuring anthracite surface coal mining and reclamation operations where such operations were regulated by environmental protection standards of the State in which they are located on or before August 2, 1977.

#### **SECTION 809.2 - OBJECTIVE.**

The objective of this Part is to provide minimum standards for bonds and insurance for anthracite surface coal mining and reclamation operations under Section 529(a) of the Act. {41873}

#### **SECTION 809.3 - RESPONSIBILITIES.**

All persons seeking to engage in or engaging in anthracite surface coal mining and reclamation operations subject to Section 785.11 and Part 820 of this Chapter and every regulatory authority regulating anthracite surface coal mining and reclamation operations shall comply with the bonding and insurance requirements of this Part.

**SECTION 809.11 - APPLICABILITY.**

This Part applies to any person seeking to engage in or engaging in anthracite surface coal mining and reclamation operations in Pennsylvania.

**SECTION 809.12 - REQUIREMENTS.**

(a) All of the provisions of this Subchapter shall apply to bonding and insuring anthracite surface coal mining and reclamation operations in Pennsylvania, provided that:

(1) Specified bond limits shall be determined by the regulatory authority in accordance with applicable provisions of Pennsylvania law, rules and regulations promulgated thereunder, and implementing policies of the Department of Environmental Resources, State of Pennsylvania.

(2) The period of liability for responsibility under each bond shall be established for those operations in accordance with applicable laws of the State of Pennsylvania, rules and regulations promulgated thereunder, and implementing policies of Pennsylvania's Department of Environmental Resources.

(b) Upon amendment of the Pennsylvania permanent regulatory program with respect to specified bond limits and period of revegetation responsibility for anthracite surface coal mining and reclamation operations, any person engaging in or seeking to engage in those operations shall comply with additional regulations the Secretary may issue as are necessary to meet the purposes of the Act.

(c) Nothing in this Part shall exempt anthracite surface coal mining and reclamation operations from the requirements under this chapter, except as set forth in Section 785.11 and Part 820 of this Chapter.

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