



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Permits

4 (Amendment)

5 405 KAR 10:015. General bonding provisions.

6 RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095,
7 350.100, 350.151, 350.465, 350.503, 30 C.F.R. Parts 800, 917, 30 U.S.C. Chapter 25

8 STATUTORY AUTHORITY: KRS 350.028, 350.060, 350.062, 350.064, 350.093,
9 350.095, 350.100, 350.151, 350.465, 350.515, 350.518, 30 C.F.R. Parts 800, 917

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the
11 cabinet to promulgate administrative regulations to establish procedures for determining
12 amounts for performance bonds for surface coal mining operations. This administrative
13 regulation establishes criteria for the base determination of bond amounts and requires
14 certain periods of liability during which the bonds shall remain in effect. This administrative
15 regulation establishes requirements for filing and maintaining performance bonds and
16 provides for adjustments in bond amounts and additional information related to minimum
17 bonds and application of bonds to ensure performance of the requirements of KRS
18 Chapter 350 in the event work is performed by the cabinet, taking into consideration such
19 things as topography, geology, future land use, and the difficulty of reclamation.

20 Section 1. Bonding Requirements. (1) An applicant shall not disturb surface
21 acreage or extend an underground shaft, tunnel, or operation prior to receipt of approval

1 from the cabinet of a performance bond covering an area to be affected by surface
2 operations and facilities.

3 (2) After an application for a new, amended, revised, or renewed permit to conduct
4 surface coal mining and reclamation operations has been approved pursuant to 405 KAR
5 Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on
6 Performance Bond, Form SME-42, a performance bond payable to the cabinet.

7 (a) The applicant shall file the Performance Bond, Form SME-42, for an operation
8 on land other than federal lands, or the Performance Bond for Surface Coal Mining and
9 Reclamation on Federal Lands, Form SME-42-F, for an operation on federal land.

10 (b) The performance bond shall be conditioned upon compliance with all ~~[of]~~the
11 requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions
12 of the reclamation plan and permit, and shall cover all surface coal mining and reclamation
13 operations to be conducted within the permit area or increment thereof until all
14 reclamation requirements of 405 KAR Chapters 7 through 24 have been met.

15 (c) The amount, duration, type, conditions, and terms of the performance bond
16 shall conform to the requirements of this administrative regulation.

17 (3) A permit shall not be revised or amended to include additional area unless the
18 liability of the current bond is extended to cover the entire permit area or increment as
19 revised or amended, and the liability of the supplemental bond covers the entire permit
20 area as revised or amended. Unless these conditions are met with respect to the bond,
21 the additional area shall be permitted as a separate increment of the current permit area
22 or pursuant to a new permit.

23 (4) A rider to the applicable performance bond, confirming coverage of the revision,

1 shall be submitted by the applicant if a revision to a permit does not change the acreage
2 of the permit area or increment but:

3 (a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste
4 impoundment to the existing permit; or

5 (b) Alters the boundary of a permit area or increment.

6 Section 2. Terms and Conditions of Performance Bond. (1) The performance bond
7 shall be in an amount determined by the cabinet as established in Sections 6, 7, and 8 of
8 this administrative regulation.

9 (2) The performance bond shall be payable to the cabinet.

10 (3) The performance bond shall be conditioned upon faithful performance of all [of
11]the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the
12 conditions of the permit and shall cover the entire permit area or the incremental area as
13 the cabinet has approved pursuant to Section 4(2) of this administrative regulation.

14 (4) The duration of the bond shall be for a time period established in Section 9 of
15 this administrative regulation.

16 (5) Surety bonds shall be subject to the conditions established in paragraphs (a)
17 through (d) of this subsection.

18 (a) The cabinet shall not accept the bond of a surety company unless the bond
19 shall not be cancelable by the surety at any time for any reason.

20 1. Surety bond coverage for permitted lands not disturbed shall be cancelled only
21 with the written approval of the cabinet, provided the surety gives written notice to both
22 the permittee and the cabinet of the intent to cancel prior to the proposed cancellation.

23 a. A cancellation notice shall be by certified mail.

1 b. Cancellation shall not be effective for lands subject to bond coverage that are
2 affected after receipt of notice, but prior to approval by the cabinet.

3 c. The cabinet shall approve a cancellation only if a replacement bond has been
4 filed by the permittee, or if the permit area has been reduced by revision to the extent that
5 the remaining bond amount, after cancellation, is sufficient to cover all the costs
6 attributable to the completion of reclamation operations on the reduced permit area in
7 accordance with Section 10 of this administrative regulation.

8 2. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice
9 to cancel bond, if the bond may be cancelled on an undisturbed area.

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

12 (c) 1. The surety shall give prompt notice to the permittee and the cabinet of a
13 notice received or action filed alleging the insolvency or bankruptcy of the surety, or
14 alleging violations of regulatory requirements that could result in suspension or revocation
15 of the surety's license to do business.

16 2. ~~If [in the event]~~ the surety becomes unable to fulfill its obligations pursuant to the
17 bond, the surety shall promptly provide written notice to the permittee and the cabinet.

18 3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or
19 suspension or revocation of its license or certificate of authority, the permittee shall be
20 deemed to be without proper bond coverage and shall promptly notify the cabinet.

21 a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant
22 to the permit or the surety of liability on the permittee's bond.

23 b. The cabinet shall issue a notice to the permittee specifying a reasonable period

1 to replace bond coverage, not to exceed ninety (90) days.

2 c. If an adequate bond is not posted by the end of the period allowed, the permittee
3 shall cease coal extraction and coal processing operations and shall comply with the
4 provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall
5 immediately begin to conduct reclamation operations in accordance with the reclamation
6 plan.

7 d. Coal extraction and coal processing operations shall not resume until the cabinet
8 has determined that, in accordance with 405 KAR Chapters 7 through 24, an acceptable
9 bond has been posted.

10 e. If an acceptable bond has not been posted by the end of the period allowed, the
11 cabinet shall suspend the permit until acceptable bond, in accordance with 405 KAR
12 Chapters 7 through 24, is posted.

13 (d) A surety bond shall be executed by the operator and a corporate surety licensed
14 to do business in the Commonwealth of Kentucky.

15 (6) Collateral bonds may include cash deposits with the cabinet, certificates of
16 deposit, or letters of credit. Collateral bonds, except for letters of credit, shall be subject
17 to the conditions established in paragraphs (a) through (f) of this subsection.

18 (a) The cabinet or its authorized agent shall obtain possession of and keep in
19 custody all collateral deposited by the applicant, until authorized for release or
20 replacement as established in 405 KAR Chapter 10.

21 (b) The cabinet shall require that certificates of deposit be assigned to the cabinet
22 or its authorized agent in writing, through the submittal of Escrow Agreement, Form SME-
23 64, and the assignment evidenced on the books of the bank issuing the certificates.

1 (c) The cabinet shall not accept an individual certificate of deposit unless it is
2 issued by an FDIC or FSLIC insured financial institution, and the cabinet shall not in any
3 circumstance accept a denomination in excess of the maximum insurable amount as
4 determined by FDIC and FSLIC.

5 (d) The cabinet shall require the issuer of certificates of deposit to waive all rights
6 of setoff or liens that it has or might have against those certificates.

7 (e) Persons with an interest in collateral posted as a bond, and who desire
8 notification of actions pursuant to the bond, shall request the notification in writing to the
9 cabinet upon an offering of collateral.

10 (f) The cabinet shall require the applicant to deposit sufficient amounts of
11 certificates of deposit, so as to assure that the cabinet will be able to liquidate those
12 certificates prior to maturity, upon forfeiture, for the amount of the bond required by this
13 chapter.

14 (7) A letter of credit shall be subject to the conditions established in paragraphs (a)
15 through (d) of this subsection.

16 (a) 1. The letter shall only be issued by a bank organized or authorized to do
17 business in the United States.

18 2. A letter of credit issued by a non-Kentucky lending institution shall be confirmed
19 by an approved Kentucky lending institution.

20 (b) A letter of credit shall be irrevocable.

21 (c) The letter shall be payable to the cabinet upon demand and receipt from the
22 cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event
23 the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon

1 demand. The Irrevocable Standby Letter of Credit, Form SME-72, and the Confirmation
2 of Irrevocable Standby Letter of Credit, Form SME-72-A, shall be submitted to the cabinet,
3 as necessary.

4 (d) 1. The issuer shall give prompt notice to the permittee and the cabinet of notice
5 received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging
6 violations of regulatory requirements that could result in suspension or revocation of the
7 issuer's charter or license to do business.

8 2. In the event the issuer becomes unable to fulfill its obligations pursuant to the
9 letter of credit, notice shall be given immediately to the permittee and the cabinet.

10 3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or
11 suspension or revocation of its charter or license, the permittee shall be deemed to be
12 without proper performance bond coverage and shall promptly notify the cabinet.

13 a. Nothing in this paragraph shall relieve the permittee of responsibility pursuant
14 to the permit or the issuer of liability on the letter of credit.

15 b. The cabinet shall issue a notice to the permittee specifying a reasonable period
16 to replace bond coverage, not to exceed ninety (90) days.

17 c. If an adequate bond is not posted by the end of the period allowed, the permittee
18 shall cease coal extraction and coal processing operations and shall comply with the
19 provisions of 405 KAR 16:010, Section 6, or 405 KAR 18:010, Section 4, and shall
20 immediately begin to conduct reclamation operations in accordance with the reclamation
21 plan.

22 d. Coal extraction and coal processing operations shall not resume until the cabinet
23 has determined that an acceptable bond has been posted.

1 e. If an acceptable bond has not been posted by the end of the period allowed, the
2 cabinet shall suspend the permit until acceptable bond is posted.

3 (8) If a permittee chooses to combine two (2) or more bonds for one (1) permit
4 area or increment, the bonds may be accompanied by a schedule, acceptable to the
5 cabinet and agreed to by all parties, which sets forth the agreed distribution of bond
6 amounts to be released or reduced pursuant to 405 KAR 10:040 and Section 10 of this
7 administrative regulation, respectively. If no schedule is submitted, the cabinet may
8 release equal percentages of each bond.

9 (9) Permit specific bonds posted by members of the Voluntary Bond Pool on
10 existing permits prior to the establishment of the Kentucky Reclamation Guaranty Fund
11 shall be released in their entirety upon successfully achieving reclamation Phase I bond
12 release in accordance with 405 KAR 10:040, Section 2(4)(a). Permit specific bonds
13 posted by members of the Voluntary Bond Pool on new permits after the establishment
14 of the Kentucky Reclamation Guaranty Fund shall be released in equal percentages at
15 each reclamation phase with the Kentucky Reclamation Guaranty Bond.

16 Section 3. Types of Performance Bond. (1) The cabinet shall approve performance
17 bonds of only those types established in this section.

18 (2) The performance bond shall be a:

19 (a) Surety bond;

20 (b) Collateral bond;

21 (c) Bond filed pursuant to the provisions of the Kentucky Reclamation Guaranty
22 Fund, KRS 350.518;

23 (d) Bond filed by the Voluntary Bond Pool; or

1 (e) Combination of the bond types listed in paragraphs (a) through (d) of this
2 subsection.

3 (3) Bonds filed by the Voluntary Bond Pool prior to its repeal in 2013 Ky. Acts ch.
4 78, Section 12, shall be deemed valid and convey the same legal right as bonds issued
5 by the KRGF. The amount, duration, conditions, and terms of bonds issued by the
6 Voluntary Bond Pool shall be deemed in compliance with the requirements of this
7 administrative regulation.

8 Section 4. Bonding Methods. The method of performance bonding for a permit
9 area shall be selected by the applicant and approved by the cabinet prior to the issuance
10 of a permit, and shall consist of one (1) of the methods established in subsections (1) or
11 (2) of this section.

12 (1) Method "S" - single area bonding. A single area bond shall be a bond that
13 covers the entire permit area as a single undivided area, for which the applicant shall file
14 the entire bond amount required by the cabinet prior to issuance of the permit.

15 (a) Liability pursuant to the bond shall extend to every part of the permit area at all
16 times.

17 (b) Except as established in Section 9(2) of this administrative regulation regarding
18 extended bond liability, there shall not be a release of all or part of the bond amount for
19 completion of a particular phase of reclamation on a part of the permit area pursuant to
20 405 KAR 10:040 until that phase of reclamation has been successfully completed on the
21 entire permit area.

22 (2) Method "I" - incremental bonding. Incremental bonding shall be a method of
23 bonding in which the permit area shall be divided into individual increments, each of which

1 is bonded separately and independently, and for which a bond shall be filed as operations
2 proceed through the permit area.

3 (a) The permit area shall be divided into distinct increments subject to approval by
4 the cabinet based on this subsection.

5 1. Each increment shall be of sufficient size and configuration to provide for
6 efficient reclamation operations should reclamation operations by the cabinet become
7 necessary.

8 2. If the approved postmining land use is of such nature that successful
9 implementation of the postmining land use capability depends upon an area being
10 integrally reclaimed, then that area shall be contained within a single increment.

11 3. These increments shall be clearly identified on maps submitted in the permit
12 application pursuant to 405 KAR Chapter 8, and the applicant shall describe the
13 approximate time schedule for beginning operations in each increment.

14 (b) Prior to issuance of a permit, the applicant shall file with the cabinet the full
15 bond amount required by the cabinet for the first increment or increments of the permit
16 area to be disturbed, which shall be not less than the minimum bond required for the
17 permit area required pursuant to Section 7 of this administrative regulation.

18 (c) The permittee shall not engage in surface coal mining and reclamation
19 operations on an increment of the permit area unless the full bond amount required by
20 the cabinet has been filed with the appropriate regional office of the department for that
21 increment, the cabinet has verified the validity of the bond, and written authorization to
22 conduct surface coal mining and reclamation operations on that increment is issued by
23 the administrator of the regional office. Credit shall not be given for reclamation on other

1 increments.

2 (d) The boundaries of each increment shall be physically marked at the site in a
3 manner approved by the cabinet pursuant to 405 KAR 16:030.

4 (e) The bond amount for an increment shall be released or forfeited independently
5 of another increment of the permit area, and liability pursuant to the performance bond
6 shall extend only to the increment expressly covered by the bond. A single bond amount
7 may be filed to cover more than one (1) increment, in which case the increments covered
8 shall be treated as a single increment.

9 (f) Except as established in Section 9(2) of this administrative regulation regarding
10 extended bond liability, there shall not be a release of bond for completion of a phase of
11 reclamation on part of an increment until that phase of reclamation has been successfully
12 completed on the entire increment.

13 (g) If the bond for an increment is completely released pursuant to 405 KAR
14 10:040, the increment shall be deleted from the permit area.

15 Section 5. Substitution of Bonds. (1) The cabinet may allow permittees to substitute
16 existing surety or collateral bonds for equivalent surety or collateral bonds, in which case
17 the liability that has accrued against the permittee on the permit area or increment shall
18 be transferred to the substitute bonds.

19 (2) The cabinet shall not release existing performance bonds until the permittee
20 has submitted and the cabinet has, in accordance with 405 KAR Chapters 7 through 24,
21 approved acceptable substitute performance bonds. A substitution of performance bonds
22 pursuant to this section shall not constitute a release of bond pursuant to 405 KAR 10:040.

23 (3) The cabinet may refuse to allow substitution of bonds if an action for revocation

1 or suspension of the permit covered by the bond is pending or if there is a pending action
2 for forfeiture of the bond.

3 Section 6. Determination of Bond Amounts. (1) In determining the bond amount,
4 the cabinet shall, using the Bond Computation Form, estimate the cost to the cabinet if
5 the cabinet had to perform the reclamation, restoration, and abatement work required of
6 a person who conducts surface coal mining and reclamation operations pursuant to KRS
7 Chapter 350, 405 KAR Chapters 7 through 24, and the permit, except as established in
8 subsection (4) of this section. This amount shall be based on:

9 (a) The estimated costs submitted by the permittee in accordance with 405 KAR
10 8:030, Section 24(4), or 405 KAR 8:040, Section 24(4), or both if applicable;

11 (b) The additional estimated costs to the cabinet that may arise from applicable
12 public contracting requirements or the need to bring personnel and equipment to the
13 permit area after its abandonment by the permittee to perform reclamation, restoration,
14 and abatement work;

15 (c) All additional estimated costs necessary, expedient, and incident to the
16 satisfactory completion of the requirements established in this section;

17 (d) An additional amount based on factors of cost changes during the previous five
18 (5) years for the types of activities associated with the reclamation to be performed; and

19 (e) Other cost information required or available to the cabinet.

20 (2) If the reclamation cost calculated submitted in a permit application is higher
21 than the minimum bond or bond calculated by the cabinet, the higher calculation shall be
22 used in any issued permit.

23 (3) The cabinet shall review the bonding amounts established in Sections 7 and 8

1 of this administrative regulation at a minimum of every two (2) years to determine if the
2 amounts are adequate due to inflation and increases in reclamation costs.

3 (4) Full cost bonding participants shall provide the cabinet a cost estimate that
4 reflects the costs of reclamation to the cabinet in accordance with the requirements of
5 405 KAR 10:080, Section 3.

6 Section 7. Minimum Bond Amount. The minimum amount of the bond for surface
7 coal mining and reclamation operations at the time the permit is issued or amended shall
8 be:

9 (1) \$75,000 for the entire surface area under one (1) permit;

10 (2) \$75,000 per increment for incrementally bonded permits, subject to Section
11 4(2) of this administrative regulation;

12 (3) \$50,000 for a permit or increment operating on a previously mined area, as
13 defined by of 405 KAR 8:001, Section 1(86), to be evaluated by the cabinet; or

14 (4) \$10,000 for underground mines that have only underground operations.

15 Section 8. Bonding Rate of Additional Areas. Areas of a surface coal mine and
16 reclamation operation shall be bonded at the rates established in subsections (1) through
17 (7) of this section for a permit issued by the Division of Mine Permits.

18 (1) Coal haul roads, other mine access roads, and mine management areas shall
19 be bonded at \$2,500 per acre and each fraction thereof.

20 (2) Refuse disposal areas shall be bonded at a minimum rate of \$7,500 per acre
21 and each fraction thereof.

22 (3) (a) An embankment sediment control pond shall be bonded at a rate of \$10,000
23 per acre and each fraction thereof, with each pond being measured separately, if the pond

1 is located off-bench and located downstream and outside the proposed mining or spoil
2 storage area.

3 (b) This rate may be applied to partial embankment structures as necessary to
4 meet the requirements of Section 6(1) of this administrative regulation.

5 (4) Coal preparation plants shall be bonded at the base acreage rate, in
6 accordance with subsection (6) of this section, in addition to the costs associated with
7 demolition and disposal costs relating to concrete, masonry, steel, timber, and other
8 materials associated with surface coal mining and reclamation operations.

9 (5) Operations on a previously mined area, as defined by 405 KAR 8:001, Section
10 1(86), shall be bonded at rate of \$2,000 per acre and each fraction thereof.

11 (6) All areas of surface coal mining and reclamation operations not otherwise
12 addressed in subsections (1) through (5) of this section shall be bonded at the rate of
13 \$3,500 per acre and each fraction thereof.

14 (7) (a) For permits that have been identified as requiring long-term treatment, the
15 cabinet shall, using the Kentucky Long-Term Treatment Bond Calculation Form, calculate
16 an additional bond or other financial assurance instrument amount based on the
17 estimated annual treatment cost, provided by the permittee and verified by the cabinet,
18 multiplied by a factor of twenty-five (25) plus any capital costs of the treatment system.

19 (b) The long-term treatment cost estimate shall be subject to verification and
20 acceptance by the cabinet. The department shall use its own estimate for annual
21 treatment costs if the department cannot verify the accuracy of the permittee's estimate.

22 Section 9. Period of Liability. (1) Liability pursuant to a performance bond
23 applicable to an entire permit area or increment thereof shall continue until all reclamation,

1 restoration, and abatement work required of persons who conduct surface coal mining
2 and reclamation operations pursuant to requirements of KRS Chapter 350, 405 KAR
3 Chapters 7 through 24, and the provisions of the permit have been completed, and the
4 permit or increment terminated by release of the permittee from further liability in
5 accordance with 405 KAR 10:040.

6 (2) In addition to the period necessary to achieve compliance with all of the
7 requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit,
8 including the standards for the success of revegetation as required by 405 KAR 16:200
9 and 405 KAR 18:200, the period of liability pursuant to a performance bond shall continue
10 for a period of five (5) years beginning with the last year of augmented seeding, fertilizing,
11 irrigation, or other work.

12 (a) The period of liability shall begin again upon augmented seeding, fertilizing,
13 irrigation, or other work required or conducted on the site prior to bond release.

14 (b) Isolated and clearly defined portions of a bonded area requiring extended
15 liability because of augmentation may be separated from the original area and bonded
16 separately upon approval by the cabinet.

17 (c) These areas shall be limited in extent, and not constitute a scattered,
18 intermittent, or checkerboard pattern of failure.

19 (d) Access to the separated areas for remedial work may be included in the area
20 pursuant to extended liability if necessary.

21 (3) If the cabinet approves a long-term intensive agricultural postmining land use
22 in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation, or other
23 husbandry practices normally associated with the approved postmining land use shall not

1 require restarting the five (5) year period of liability.

2 (4) The bond liability of the permittee shall include only those actions that the
3 permittee is required to take pursuant to the permit, including completion of the
4 reclamation plan in a manner that the land shall be capable of supporting a postmining
5 land use approved pursuant to 405 KAR 16:210. Actions of third parties beyond the
6 control and influence of the permittee and for which the permittee is not responsible
7 pursuant to the permit shall not be covered by the bond.

8 Section 10. Adjustment of Amount. (1) The amount of the performance bond
9 liability applicable to a permit or increment shall be adjusted by the cabinet if the:

10 (a) Acreage in the permit area or increment is either increased or decreased; or

11 (b) Cabinet determines that the cost of future reclamation, restoration, or
12 abatement work has changed. If it is determined that an adjustment pursuant to this
13 paragraph is necessary, the cabinet shall:

14 1. Notify the permittee, the surety, and any person with a property interest in
15 collateral who has previously requested a notification in writing; and

16 2. Provide the permittee an opportunity for an informal conference on the
17 adjustment. The requirements of 400 KAR 1:090 and 400 KAR 1:110 shall not apply to
18 the conduct of the conference.

19 (2) The amount of the performance bond liability applicable to a permit or
20 increment may be adjusted by the cabinet upon application by the permittee pursuant to
21 405 KAR 8:010, Section 20, to delete acreage from the permit area or increment thereof
22 if the acreage has not been affected by the surface coal mining and reclamation operation.
23 The provisions of 405 KAR 10:040, Section 2(3), shall apply. A reduction due to a deletion

1 of acreage shall not constitute a bond release and shall not be subject to the procedures
2 of 405 KAR 10:040, Section 1.

3 (3) The cabinet may grant reduction of the required performance bond amount if
4 the permittee's method of operation or other circumstances will reduce the maximum
5 estimated cost to the cabinet to complete the reclamation responsibilities and therefore
6 warrant a reduction of the bond amount. The request shall not be considered as a request
7 for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

8 (4) The cabinet shall refuse to approve a reduction of the performance bond liability
9 amount if an action for revocation or suspension of the permit covered by the bond is
10 pending, if there is a pending action for forfeiture of the bond, or if the permittee is
11 currently in violation of 405 KAR Chapters 7 through 24 on that permit or increment.

12 Section 11. Supplemental Assurance. (1) If alternative distance limits or additional
13 pits are approved pursuant to 405 KAR 16:020, Section 3[-], the applicant shall submit to
14 the cabinet supplemental assurance in the amount established in this section. This
15 supplemental assurance shall be for the purpose of assuring the reclamation of the
16 additional unreclaimed disturbed area and shall be in addition to the performance bond
17 required pursuant to 405 KAR Chapter 10. The applicant shall submit supplemental
18 assurance on the cabinet form, Supplemental Assurance, Form SME-42 (SA). This form
19 shall be accompanied by the Escrow Agreement, Form[(for use with Supplemental
20 Assurance form only),] SME-64[-(SA)].

21 (a) The supplemental assurance shall not be subject to the bond release
22 requirements of 405 KAR 10:040, but shall be returned in accordance with the
23 requirements of this section.

1 (b) The requirements of Sections 2, 3, and 5 of this administrative regulation and
2 405 KAR 10:035 and 10:050 shall apply to supplemental assurance.

3 (2) Single seam contour mining. For single seam contour operations subject to 405
4 KAR 16:020, Section 3[-], the amount required shall be \$150,000 per 1,500 feet, or any
5 portion thereof, of additional distance approved for the first pit pursuant to 405 KAR
6 16:020, Section 3.[-] If an additional pit or pits are approved, the amount shall be \$150,000
7 per 1,500 feet, or any portion thereof, including the first 1,500 feet of each additional pit.

8 (3) Multiple seam contour mining. For multiple seam contour mining operations
9 subject to of 405 KAR 16:020, Section 3(6), the amount required shall be \$150,000 per
10 1,500 feet, or any portion thereof, of additional distance approved for the first multiple
11 seam operation pursuant to of 405 KAR 16:020, Section 3.[-] If additional multiple seam
12 operations are approved, the amount shall be \$150,000 per 1,500 feet, or any portion
13 thereof, including the first 1,500 feet of each additional multiple seam operation.

14 (4) Mountaintop removal. If a mountaintop removal operation begins by mining a
15 contour cut around all or a portion of the mountaintop, that contour portion shall require
16 the same supplemental assurance established in subsection (2) of this section.

17 (5) Area mining. The amount required shall be \$150,000 for any four (4) spoil
18 ridges, or any portion thereof, of additional distance approved for the first pit pursuant to
19 405 KAR 16:020, Section 3.[-] If an additional pit or pits are approved, the amount shall
20 be \$150,000 for any four (4) spoil ridges, or any portion thereof, including the first four (4)
21 spoil ridges of each additional pit.

22 (6) Return of supplemental assurance. Supplemental assurance shall be returned
23 to the person that submitted it upon:

1 (a) Application to the cabinet for the return; and

2 (b) Inspection and written documentation (including photographs) by the cabinet
3 verifying that the area for which the supplemental assurance was submitted has been
4 backfilled and graded (or in the case of mountaintop removal, the associated highwall has
5 been eliminated by mining operations).

6 Section 12. Incorporation by Reference. (1) The following material is incorporated
7 by reference:

8 (a) "Performance Bond, Form SME-42", August 2024~~["June 2013]~~;

9 (b) "Performance Bond for Surface Coal Mining and Reclamation on Federal
10 Lands, Form SME-42-F", August 2024~~["Irrevocable Standby Letter of Credit, Form SME-
11 72", July 1994]~~;

12 (c) "Supplemental Assurance, Form SME-42 (SA)", August 2024~~["Confirmation of
13 Irrevocable Standby Letter of Credit, Form SME-72-A", July 1994]~~;

14 (d) "Escrow Agreement, Form SME-64", August 2024~~["Supplemental Assurance,
15 SME-42 (SA)", July 1994]~~;

16 (e) "Irrevocable Standby Letter of Credit, Form SME-72", August 2024~~["Escrow
17 Agreement (for use with Supplemental Assurance form only), SME-64 (SA)", July 1994]~~;

18 (f) "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", August
19 2024~~["Escrow Agreement, Form SME-64", October 2008]~~; [and]

20 (g) "Bond Computation Form", May 2014~~["Performance Bond for Surface Coal
21 Mining and Reclamation on Federal Lands, Form SME-42-F", June 2013]~~; and

22 (h) "Kentucky Long-Term Treatment Bond Calculation Form", May 2022.

23 (2) This material may be inspected, copied, or obtained, subject to applicable

1 copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard,
2 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

3 (3) This material may also be obtained at the Division of Mine Permits Web site at
4 <https://eec.ky.gov/Natural-Resources/Mining/Mine-Permits/Pages/electronic-forms.aspx>.

405 KAR 10:015. General bonding provisions.



Rebecca W. Goodman, Secretary
Energy and Environment Cabinet



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on October 28, 2024, at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant II
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Office of the Commissioner
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

405 KAR 10:015

Contact Person: Dawn Baase
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(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for the determination of reclamation bond amounts, liability periods, long-term treatment financial assurance and requirements for filing and maintaining performance bonds for surface coal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure adequate bonds or other financial assurance instruments are held by the cabinet to ensure performance of the requirements of KRS Chapter 350 in the event reclamation or remediation work is performed by the cabinet on disturbed coal mine sites.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350 provides the department the authority to promulgate administrative regulations for implementing a permanent program to regulate coal mining in the Commonwealth. This administrative regulation establishes procedures for determining amounts for performance bonds for surface coal mining operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for determination of bond amounts, liability periods, long-term treatment financial assurance and requirements for filing and maintaining performance bonds for surface coal mining operations and ensures adequate bonds are held by the cabinet to perform the requirements of KRS Chapter 350 in the event reclamation or remediation work is performed by the cabinet.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation provides the cabinet's bonding calculation forms that are currently being used and have been approved by the federal Office of Surface Mining Reclamation and Enforcement. The amendment also makes technical corrections.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation provides the cabinet's bonding calculation forms as required by KRS 350.060 and makes minor technical corrections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 350 provides the cabinet the authority to promulgate administrative

regulations to establish procedures for determining amounts and additional information for performance bonds for surface coal mining operations. This administrative regulation provides the cabinet's bonding calculation forms as required by KRS 350.060.

(d) How the amendment will assist in the effective administration of the statutes: KRS 350.028 provides the department the authority to enforce a permanent regulatory program in the Commonwealth. Adding the cabinet's bonding calculation forms to the administrative regulation are necessary to comply to KRS 350.060(11).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity operating a surface coal mine operation in the Commonwealth. There are currently 1,022 surface coal mines operating in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified do not have any actions or requirements due to the amendments of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities identified will not have a standard cost increase associated with the amendments of this administrative regulation. Regulated entities will continue to be responsible for bond premiums and collateral requirements. Premiums vary and are dependent on the bonding company and the credit rating of the company. Over the past two years, permittees that have been identified as requiring long-term treatment have had a cost increase in long-term treatment bonds as they are being recalculated by the cabinet. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will benefit by readily having access to the departments bonding calculations as approved by the federal Office of Surface Mining Reclamation and Enforcement.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There will be no costs associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement

of this administrative regulation: The funding for the implementation and enforcement of this administrative regulation will be with a combination of general and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulatory amendment will not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulatory amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No, tiering is not applied to this administrative regulation. All entities that operate a coal mine will be required to comply with the applicable bonding requirements.

FISCAL IMPACT STATEMENT

405 KAR 10:015

Contact Person: Dawn Baase
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Email: Dawn.Baase@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.028, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100, 350.151, 350.465, 350.515, 350.518, 30 C.F.R. Parts 800, 917

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Energy and Environment Cabinet, Department for Natural Resources, Division of Mine Permits, and Division of Mine Reclamation and Enforcement.

(a) Estimate the following for the first year:

Expenditures: There are no known effects on current expenditures.

Revenues: There are no known effects on current revenues.

Cost Savings: There are no known cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Expenditures, revenues, and cost savings will not change in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no known effects for local entities.

(a) Estimate the following for the first year:

Expenditures: There are no known effects on expenditures.

Revenues: There are no known effects on revenues.

Cost Savings: There are no known cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Expenditures, revenues, and cost savings will not change in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Regulated entities are those who have obtained a surface coal mine permit in the Commonwealth who currently have posted a bond with the cabinet.

(a) Estimate the following for the first year:

Expenditures: There is not a standard cost increase associated with this administrative regulation. Regulated entities will continue to be responsible for

bond premiums and collateral requirements. Premiums vary and are dependent on the bonding company and the credit rating of the company. Over the past two years, permittees that have been identified as requiring long-term treatment have had a cost increase in long-term treatment bonds as they are being recalculated by the cabinet. Based on the long-term treatment bonds that have been recalculated by the cabinet since 2022, the average cost increase in these bonds is estimated to be \$1.2M. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

Revenues: There are no known effects to revenues for regulated entities.

Cost savings: There are no known cost savings for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues, and cost savings will not change in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There are currently 1,233 permits who currently have bonds posted. The current cumulative amount of all types of bonds posted is \$7.9M. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

There is not a standard cost increase associated with this administrative regulation. Regulated entities will continue to be responsible for bond premiums and collateral requirements. Premiums vary and are dependent on the bonding company and the credit rating of the company.

Costs to a permittee that have been identified as requiring long-term treatment are increasing as these bond amounts are recalculated. Long-term treatment costs are based on the estimated annual treatment cost multiplied by a factor of 25 plus any capital costs of the treatment system. The Division of Mine Permits is in the process of recalculating long-term treatment bonds for the 90 permits identified as requiring long-term treatment. Approximately 40% of the long-term treatment bonds have been recalculated since 2022.

(b) Methodology and resources used to determine the fiscal impact: Adequate bond amounts are required to ensure the cabinet has the financial means to cover costs in the event reclamation or remediation work is performed by the cabinet on disturbed coal mine sites. The fiscal impact was determined using the current cumulative amount of bonds posted and the projected increase to long-term treatment bonds as they are recalculated by the Division of Mine Permits. Based on the long-term treatment bonds that have been recalculated by the cabinet since 2022, the average cost increase in these bonds is estimated to be \$1.2M. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The Division of Mine Permits is currently recalculating long-term treatment bonds for those entities identified as requiring long-term treatment. Approximately 40% of the long-term treatment bonds have been recalculated totaling \$3.9M. The increase in long-term treatment bonds is required to ensure the cabinet has the financial means to cover costs for the treatment of discharges in the event reclamation or remediation work is performed by the cabinet in the event of a forfeiture. There are no changes to the minimum bonding amounts imposed by this administrative regulation.

(b) The methodology and resources used to reach this conclusion:

Long-term treatment bonds are based on the estimated annual treatment cost, provided by the permittee and verified by the cabinet, multiplied by a factor of 25 plus any capital costs of the treatment system.

FEDERAL MANDATE ANALYSIS COMPARISON

405 KAR 10:015

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(1) Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 800

(2) State compliance standards. KRS 350.028 and KRS 350.060.

(3) Minimum or uniform standards contained in the federal mandate. 30 C.F.R. Part 800 are federal regulations related to bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter or additional requirements than the federal regulation.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

405 KAR 10:015

- I. "Performance Bond, Form SME-42", August 2024, is a 2-page form required to be submitted to the cabinet by an applicant that is applying for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations.
- II. "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", August 2024, is a 2-page form required to be submitted to the cabinet by an applicant that is applying for a new, amended, revised, or renewed permit to conduct surface coal mining and reclamation operations on federal lands.
- III. "Supplemental Assurance, Form SME-42 (SA)", August 2024, is a 2-page form required to be submitted to the cabinet by an applicant if alternative distance limits or additional pits are approved to assure the reclamation of the additional unreclaimed disturbed area. The Escrow Agreement, Form SME-64, shall accompany this form.
- IV. "Escrow Agreement, Form SME-64", August 2024, is a 2-page form is required to be submitted to the cabinet by an applicant if a certificate of deposit is used to comply with the performance bond requirement. This form shall accompany the Supplemental Assurance, Form SME-42 (SA).
- V. "Irrevocable Standby Letter of Credit, Form SME-72", August 2024, is a 1-page form to be submitted to the cabinet if an irrevocable standby letter of credit is used to comply with the performance bond requirement.
- VI. "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", August 2024, is a 1-page form to be submitted to the cabinet to confirm an irrevocable standby letter of credit.
- VII. "Bond Computation Form", May 2014, is a spreadsheet used by the cabinet to estimate the cost to the cabinet if the cabinet had to perform the reclamation, restoration, and abatement in the event of forfeiture. KRS 350.060(11) requires bond protocol regulations to include the formulas for establishing bonding amounts.
- VIII. "Kentucky Long-Term Treatment Bond Calculation Form", May 2022, is a spreadsheet used by the cabinet to calculate the amount of a long-term treatment bond, if applicable. KRS 350.060(11) requires bond protocol regulations to include the formulas for establishing bonding amounts.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

405 KAR 10:015

I. The "Performance Bond, Form SME-42", was amended to include formatting and minor clarifications. Page 2 was amended to add a field to specify the state where the notary is licensed.

II. The "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F", was amended to include formatting and minor clarifications. Page 2 was amended to add a field to specify the state where the notary is licensed.

III. The "Supplemental Assurance, Form SME-42 (SA)", was amended to include formatting and minor clarifications. Corrections to the cabinet and department references were also amended. Page 2 was amended to specify the county is located in Kentucky and removes the specificity of naming the community. The form was amended to add a field to specify the state where the notary is licensed and corrected a reference for a section to completed for surety bonds.

IV. The "Escrow Agreement, Form SME-64", was reformatted. No substantive changes were made to the form.

V. The "Irrevocable Standby Letter of Credit, Form SME-72", was amended to include formatting and minor clarifications. Corrections to the cabinet and department references and addresses were also amended. Additionally, the revision date for the Uniform Customs and Practice for Documentary Credits was amended to reference the 2007 revision and the publication number 600.

VI. The "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A", was amended to include formatting and minor clarifications. Corrections to the cabinet and department references and addresses were also amended.

VII. The "Bond Computation Form", this form has been used by the cabinet since 2014 and this is the first time it is incorporated by reference in this administrative regulation.

VIII. The "Kentucky Long-Term Treatment Bond Calculation Form", this form has been used by the cabinet since 2022 and this is the first time it is incorporated by reference in this administrative regulation.

