DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 800 and 806

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs; Self-Bonding

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

ACTION: Proposed rule.

SUMMARY: In this rulemaking the Office of Surface Mining Reclamation and Enforcement (OSM) reproposes the rule on self-bonding. This proposed rule would establish the following two standards of financial eligibility to self bond: At least 5 years of continuous operation; and financial solvency demonstrated by an "A" or higher bond rating, a tangible net worth of at least $10 million, or ownership of at least $20 million of tangible fixed assets. The amount of all self-bonds that regulatory authorities may accept would be limited to 25 percent of the applicant's tangible net worth. Several other criteria for self-bonding also are proposed. A section would be added allowing the regulatory authority to accept the guarantee of a qualifying parent corporation for its subsidiaries. The rulemaking is necessary in order to replace the current rule which was suspended.

DATES: *Written comments:* Accepted until 5 p.m. (eastern time) on September 20, 1982.

Public hearings: Held on request only, on September 8, 1982, at 9:00 a.m. (local).

Public meetings: Scheduled on request only.

ADDRESSES: *Written comments: Hand-deliver* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR–21), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining U.S. Department of the Interior, Administrative Record (TSR–21), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; Pittsburgh, Pa.—William S. Moorehead Federal Building, Room 2212, 1000 Liberty Avenue; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT: Public hearings and information: Adele Merchant, Branch of Economic Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; 202–343–2156.

Public meetings; Jose del Rio, 202–343–4022.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the OSM offices listed in "Addresses" by contacting the person listed under "For Further Information Contact."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St.). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, in Section 509(c) authorizes self-bonding for the completion of reclamation work which an operator may fail to perform. The Act requires that an applicant for self-bonding demonstrate to the regulatory authority that it has a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure. Pursuant to Section 501(c) the Secretary of the Interior must promulgate rules to implement Title V of the Act, of which the self-bonding provision is a part, and upon which State regulatory program approval is based.

A self-bonding rule, 30 CFR 806.11(b), was first proposed on September 18, 1978 (43 FR 41661 and 41869). The proposed rule would have established general criteria in order for a regulatory authority to accept an applicant's self-bond. Besides the provision required by the Act for an agent to receive service of process, the proposed rules required a demonstration of a history of compliance with the Act, the rules and the State or Federal program over a 10-year period. The criterion for financial solvency proposed was simply that the applicant have a net worth of no less than twice the total amount of bond obligations on all its surface coal mining and reclamation permits.

This meant that the total amount of self-bond could not exceed one-half the applicant's net worth. In addition, all parties either owning or having a beneficial interest in the applicant were to execute an indemnity agreement under which each would be jointly and severally liable.

In the final rule of March 13, 1979, (44 FR 14901, 15114 and 15387) the ratio was decreased from one-half of the net worth to one-sixth so as to be more in line with the ratio used by the surety industry. A significant new requirement was added in the final rule. A mortgage or security interest in real or personal property valued at an amount at least equal to the bond was to be granted to the regulatory authority. Another

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Copy of 1982 Federal Register re self-bonding
Public Service Commission Staff
John Schuh, Legal Counsel

requirement of detailed financial information from an applicant was also added.

A petition to amend the bonding rules was received shortly after the final rules became effective (44 FR 28005, May 14, 1979). One of the sections which the petitioners were concerned with was § 806.11 on self-bonding. The petition was granted (44 FR 51098, September 6, 1979), and on January 24, 1980, a proposed rulemaking notice appeared (45 FR 6028) which dealt with the many comments received on self-bonding and which indicated the somewhat controversial nature of the subject (45 FR 6033). The rulemaking notice (45 FR 6040) proposed to make self-bonding a separate section, § 806.12. Most importantly, only one eligibility standard would have been retained—the applicant would have to have been in continuous operation for 10 years. The net worth to self-bond ratio would have been eliminated. Also, the requirement of a mortgage or security interest was proposed to be dropped.

The final rule, however, published on August 6, 1980, (45 FR 52306) retained the self-bonding rules as they were made final in March 1979. The failure to revise the self-bonding rules precipitated litigation by several groups contending that the rules unduly favored large operators. *National Coal Association and American Mining Congress v. Andrus,* Civ. No. 80–2530, and *Pennsylvania Coal Mining Association v. Department of the Interior,* Civ. No. 80–2544, both in the U.S. District Court, District of Columbia. A settlement agreement in these matters was entered into in December 1981.

While this litigation was pending, a proposed revision of all the bonding rules was published on September 9, 1981 (46 FR 45082). The proposed revision to self-bonding would have greatly simplified the rules, leaving the adoption of detailed requirements to the States in their programs. Public comments on the proposed revision called for more detailed requirements for self-bonding eligibility, which would have required a substantial change from the proposed rule. In repsonse to the proposed September 9, 1981, self-bonding rule, some commenters requested more detailed Federal guidance for development of self-bonding in State programs. Some commenters believed OSM was doing a disservice to all parties by placing responsibilities on the States to establish self-bond criteria. Some felt that the previous rules should be adopted as the standard of compliance. Other commenters favored publishing minimum standards by which to evaluate State program submittals. Surety companies believed that loosely administered self-bonding programs may preclude surety industry involvement in surface coal mining reclamation bonding.

In light of comments received on the proposed rules and as a result of the agreement reached with the parties in the litigation, OSM suspended, in part, the existing self-bonding rules on December 7, 1981 (46 FR 59934). The self-bonding rules in § 806.14 were suspended except for certain general provisions in § 806.14(a), (a)(1), part of (a)(5) and (a)(7), which all tracked provisions in Section 509(c) of the Act.

OSM has decided to repropose the self-bonding revisions separately from the other bonding rules. Thus, if adopted, the final revision of the bonding rules would consolidate Parts 800, 801, 805, 806, 807, 808 and 809 into one part—Part 800, but would not include provisions related to self-bonding, other than the definition of a self-bond. As proposed on September 9, 1981, the definition of a "self-bond" would be an "indemnity agreement in a sum certain executed by the permittee and made payable to the regulatory authority, with or without separate surety."

This separate rulemaking, which would add the self-bonding rules to 30 CFR Part 800 as § 800.23, proposes more detailed requirements for self-bonding than under the September 1981 rulemaking, but not as many as under the March 1979 rules. OSM is asking that comments on the proposed rule include documentation and detailed explanations. The comments referred to in this proposed rulemaking were received in response to the September 9, 1981, proposal.

III. Discussion of Proposed Rules

General

In this proposal all self-bonding rules would be moved to new 30 CFR 800.23. The existing suspended and nonsuspended self-bonding rules in § 806.14 are proposed for deletion and would be replaced by proposed § 800.23.

Proposed § 800.23 would allow a State to develop a comprehensive self-bonding program to balance the risk of forfeiture versus the security required in a self-bonding program. The proposed self-bonding rule would establish minimum criteria required to allow an applicant for a surface coal mining and reclamation operation permit to self-bond. States would be encouraged to adopt more detailed rules that reflect the financial structure of the local industry, and which provide the regulatory authority with sufficient protection from exposure to the risk of forfeiture.

The rules proposed here would establish the following four basic requirements for self-bonding under Section 509(c) of the Act: (1) Continuous operation over a period of 5 years; (2) financial solvency which may be demonstrated by either an "A" or higher bond rating, a tangible net worth of $10 million or ownership of $20 million in tangible fixed assets; (3) submittal of a report containing certified financial information and an opinion of an independent certified public accountant based on the applicant's financial statement; and (4) execution of an indemnity agreement. These proposed rules would also allow a parent corporation, having a controlling interest in a subsidiary which applies for a surface mining permit, to guarantee the self-bond of the subsidiary if the parent corporation meets certain requirements.

It is proposed that the self-bonding rules in this rulemaking would form the benchmark by which the States could build their own programs. The States, if they choose to allow self-bonding, could add their own relevant criteria. Overly detailed provisions in OSM's rules, such as the August 6, 1980, self-bonding rules, would prevent a State from adopting additional provisions to address the particular self-bonding conditions in the State's mining industry. Therefore, the objective in the rulemaking is to make the standards general enough to take into account state-specific conditions. A detailed discussion of each of the provisions of the proposed rule follows.

Regulatory Authority Discretion

Proposed § 800.23(a) would set the conditions under which a self-bond from an applicant for a surface coal mining and reclamation operation permit may be accepted by the regulatory authority. The acceptance of a self-bond would be discretionary with the regulatory authority. Even though an applicant meets the eligibility criteria, the regulatory authority could decide not to accept an applicant's self-bond whenever there was a reasonable basis for denial. Section 509(c) of the Act makes plain that acceptance of self-bonding is discretionary. This provision tracks the language of the Act.

Agent for Service of Process

The first condition for acceptance of a self-bond, proposed in § 800.23(a)(1), would require the permit applicant to designate an agent in the State who will receive service of process. This

requirement is directly from Section 509(c) of the Act.

Continuous Operation

The second condition, in proposed § 800.23(a)(2), would require that the permit applicant must have been in continuous operation for a period of 5 years. Section 509(c) of the Act provides that an operator be in "continuous operation sufficient for authorization to self-insure * * *." In existing suspended § 806.14(a)(5) the requirement was a period of 10 years. However, OSM believes that a 5-year history of continuous operation when considered with the other financial tests proposed in this rulemaking is sufficent to establish the financial soundness of the business entity.

Under proposed § 800.23(a)(2) (i) and (ii) a joint venture or syndicate in operation less than 5 years could possibly qualify for a self-bond if each of its members has been in operation for at least 5 years. Also, regulatory authorities, in calculating the five-year period of continuous operation, could exclude periods of business interruptions caused by events beyond the control of the applicant, such as natural disasters. In such situations the regulatory authority's determination of whether the requirement for 5 years of continuous operation has been met would have to be related to the applicant's likelihood of remaining in business during the mining and reclamation operations.

Financial Solvency

Proposed § 800.23(a)(3) sets the third condition that would have to be met before a self-bond may be accepted by the regulatory authority. This provision would require the applicant to submit financial information in sufficient detail to show that the applicant meets one of the three financial solvency criteria listed in proposed § 800.23(a)(3) (i), (ii) and (iii). Additional financial solvency tests could be established by the regulatory authority, *e.g.*, financial ratios, such as current assets to current liability, and total liability to net worth. Ratios such as these relate the financial stability of the company to other entities in the industry.

The first criterion in proposed § 800.23(a)(3)(i) would be based on the applicant's credit history. The applicant would have to have at least an "A" rating for its outstanding debt. A rating by either Moody's Investor Service or Standard and Poor's Corporation would be required. The credit history criterion would be added to enable operators who are financially sound but who do not have $10 million in tangible net worth or $20 million in tangible fixed assets to qualify. Bond ratings provide an appraisal of the firm's ability to repay specific long-term debts.

A 1981 study of financial tests for owners or operators of hazardous waste facilities, prepared by the Environmental Protection Agency (EPA), found that firms receiving any of the four highest ratings from Moody's or Standard and Poor's bond rating services show financial strength equal to firms qualifying under certain financial ratio tests. (Complete references are provided at the end of the discussion of these proposed rules.) Partly as a result of this study, EPA adopted rules (47 FR 15032, April 7, 1982) which require that an applicant for financial assurance tests have $10 million of tangible net worth and certain other financial criteria, in addition to the appropriate bond rating.

Since OSM would not be requiring the double proof of solvency—the $10 million tangible net worth in conjunction with the bond rating criterion—the applicant's bond rating would have to be in the top three ratings from Moody's (Aaa, Aa, A) or Standard and Poor's (AAA, AA, A). This would better assure that the company applying for self-bonding under the bond rating criterion would be able to survive in depressed economic conditions (Standard and Poor's Guide to Bond Ratings, 1979).

The second criterion for financial solvency proposed in § 800.23(a)(3)(ii) would set a requirement of a tangible net worth of at least $10 million. Accumulation of a net worth of this amount is a sufficient indication of financial solvency to assure that the applicant will fulfill the reclamation responsibility. The amount of $10 million was chosen because it is high enough to indicate that a business is well-established and it provides a sufficient financial cushion should the regulatory authority have to act under the indemnity agreement to complete the reclamation.

EPA, in its study of financial tests for owners or operators of hazardous waste facilities, mentions a National Association of Accountants' report that found that the failure of firms with a tangible net worth of greater than $10 million was "sharply lower" than the failure rate of those firms with tangible net worth less than $10 million (Backer and Gosman, 1978). EPA's review of all available data indicated that the rate of failure for firms with the $10 million tangible net worth (22 per 10,000 firms) was almost half that of firms with less than $10 million net worth (Environmental Protection Agency, 1981).

OSM's proposal to allow net worth requirements to be measured using only tangible net worth would exclude intangible items from net worth. Intangible items include goodwill, patents, royalties, and trademarks, which OSM considers too difficult to liquidate. EPA, in the preamble of its April 7, 1982, **Federal Register** notice adopting the hazardous waste rules (47 FR 15032), noted that intangibles may be difficult to convert to cash, and thus restricted its net worth requirements to trangible net worth. OSM realizes, however, the financial ratios that the regulatory authority may use in assessing a company's financial health customarily use intangibles in assessing total net worth. OSM does not intend by the use of "tangible net worth" in proposed § 800.23(a)(3)(ii) to require such a restriction in the financial ratios as may be used by the regulatory authority as an additional test to measure financial solvency of an applicant.

The third test for indicating financial solvency in proposed § 800.23(a)(3)(iii) would be for the applicant to own at least $20 million of tangible fixed assets in the United States. Even though the operator may have little equity in the assets, ownership of $20 million of tangible fixed assets is a sufficient indication that lenders are confident in the operator's business ability and that they expect it to meet its financial obligations.

When considered with the restriction of the proposed minimum allowable net worth to bond amount ratio of 4:1 (discussed under proposed § 800.23(b)), the criterion of substantial fixed assets should be sufficient to ensure the applicant's ability to complete his reclamation responsibilities. Tangible fixed assets would include business plants and equipment. It would not include land, or coal in place.

OSM has considered allowing applicants having a net worth or fixed assets lower than the proposed amounts to qualify for self-bonding. OSM believes that the amounts proposed, $10 million of tangible net worth or $20 million of tangible fixed assets, would provide the regulatory authority with the minimum protection from risk of forfeiture. Information provided to OSM by Dun & Bradstreet in April, 1982, indicated that 130 coal companies could qualify under restrictions of 5-years continuous operation and a net worth of at least $10 million or tangible fixed assets of at least $20 million.

OSM will consider lowering the net worth and fixed asset minimums if commenters can show through

documentation and explanation that lower minimums coupled with other financial criteria will afford sufficient protection from risk to the regulatory authority. By lowering the minimums more coal companies could qualify. For instance, the Dun & Bradstreet data showed that 70 additional companies could qualify if the minimums were lowered to $5 million net worth or $10 million in tangible fixed assets. If convincing comments are received in support of lowering minimums, OSM will consider the alternatives when issuing final self-bonding rules. Comments are also requested as to whether a different debt rating criterion should be used other than Moody's and standard and Poor's top three bond ratings.

Submission of Financial Information

Proposed § 800.23(a)(4) would require the applicant to submit a financial report prepared by an independent certified public accountant from which the regulatory authority would be able to determine continuous operation and financial solvency. The requirements of existing suspended § 806.14(a)(5)(i)–(vii) are considered too detailed or too stringent and would not allow the States the flexibility to set their own financial information requirements for self-bonding. For this reason the proposal would allow the regulatory authority to specify the precise financial information that must be submitted. The statement would have to be certified by an independent certified public accountant and be accompanied by the accountant's opinion as to the applicant's ability to meet all obligations under its reclamation plan.

Parent Corporation Guarantor

Proposed § 800.23(a)(5) would allow subsidiaries of qualified parent corporations to self-bond, if the parent corporation would become the guarantor through the use of a "corporate guarantee." In addition to requiring the parent corporation to meet the same conditions as any other applicant for a self-bond, the rule would require a controlling interest in the subsidiary by the parent corporation. The willingness of the parent corporation to assume the bond obligations would indicate that the parent corporation has an interest in a successful mining and reclamation operation. Under proposed § 800.23(a)(5)(i) the regulatory authority would be assured funds from the guarantor to complete the reclamation plan if the subsidiary is unable to and the parent corporation chooses not to complete the reclamation.

Proposed § 800.23(a)(5) (ii) and (iii) would allow the parent corporation as guarantor to cancel the corporate guarantee only if the arrangement is satisfactory to the regulatory authority and only if replacement bond is obtained before the cancellation date. The parent corporation guarantor would have the burden of protecting the regulatory authority from risk and would therefore be obligated under the corporate guarantee in the event that a replacement bond is unobtainable.

Limitation on Amount of Self-Bond

Proposed § 800.23(b) would set a basic limitation on all self-bonds regardless of under which criterion under paragraph (a)(3) the applicant may be eligible. Under this proposal the total value of all self-bonds that a regulatory authority may accept from an applicant or a parent corporation guarantor would not exceed 25 percent of the tangible net worth of the applicant or guarantor. OSM believes that this restriction would provide a sufficient financial cushion when coupled with other qualifying criteria so that the risk involved is acceptable, that is, the regulatory authority would be assured that reclamation would be completed.

There is no requirement in this proposal to grant a security interest in real and personal property for a self-bond as was required in the 1979 rule. An operator's bond, if secured with collateral, becomes a collateral bond. This point was made in the May 1979 rulemaking petition to amend the bonding rules (44 FR 28007). In this proposal, when an operator does not qualify for self-bonding, then collateral could be posted for the bond amount, a surety bond obtained, or a letter of credit provided.

Some commenters to the September 1981 proposal asserted that self-bonds should be supported by collateral. Under this proposal regulatory authorities would have the discretion to require collateral as part of a self-bond, but the proposed Federal self-bonding rules would not require collateral.

Indemnity Agreement

Proposed § 800.23(c)(1) through (c)(4) would set terms for the indemnity agreement, such as who is required to sign it and what rights the regulatory authority acquires by its acceptance. The indemnity agreement specifies the amount of the bond and formally enumerates the applicant's and other parties' liability in the event of forfeiture.

Proposed § 800.23(c)(1) would set a general requirement that the indemnity agreement be executed by all parties who must be bound by it. It also would provide that such an agreement shall be a joint and several obligation of the parties. This latter provision is taken from existing suspended § 806.14(a)(6)(iii).

Proposed § 800.23(c)(2) would pertain to corporations and parent corporation guarantors entering into an indemnity agreement. It would require that the indemnity agreement be signed by two authorized corporate officers and supported by the corporation's board of directors. The provision is taken from existing suspended § 806.14(a)(6)(i)(A).

Proposed § 800.23(c)(3) specifies requirements for applicants who are partnerships, joint ventures and syndicates. Each partner and each member of a joint venture or syndicate who has a beneficial interest would be required to execute the agreement. This provision is similar to existing suspended § 806.14(a)(6) (i)(C) and (iv).

Forfeiture

Proposed § 800.23(c)(4) would require the applicant or parent corporation guarantor, pursuant to § 808.13, to pay the regulatory authority upon forfeiture the sum necessary to complete the reclamation. Section 808.13 of the existing bonding rules sets the procedures for forfeiture and was proposed for revision and redesignation as § 800.50(a) on September 9, 1981 (46 FR 45090). If the proposed revisions to § 808.13 are finalized, the change of § 808.13 to § 800.50(a) would also be noted in the final rule adopting proposed § 800.23.

Proposed § 800.23(c)(4) would also provide that under forfeiture an indemnity agreement would operate as a judgment against the liable parties if permitted under State law. This would enable the regulatory authority to take legal action to collect the bond should the parties refuse to pay the sum demanded. This provision has been included in this proposal to provide for a directly enforceable instrument.

Conditions for Release from Self-Bonds

Proposed § 800.23(d) would require that at any time a permittee, who is self-bonded under these provisions, or a parent corporation guarantor does not meet the eligibility criteria of proposed § 800.23(a)(3) the permittee shall have 90 days to post surety or collateral bonds. Proposed § 800.23(d) would encompass the standards as proposed in September, 1981, for § 800.16(e) on surety insolvency—a permittee would have 90 days to post substitute bonds before having the cease coal production and

begin reclamation operations (46 FR 45093).

Proposed Deletions

Provisions of existing § 806.14 (a), (a)(1), part of (a)(5) and (a)(7) which were not suspended in the December 7, 1981, notice are proposed for deletion. In this rulemaking, proposed § 800.23 (a), (a)(1), (a)(5) and (d) would retain the intent of the paragraphs proposed for deletion.

Reference Materials

Reference materials used to develop these proposed rules are as follows:

Backer, M. and M. L. Gosman. 1978. *Financial Reporting and Business Liquidity.* New York: National Association of Accountants. pp. 143–179.

Dun and Bradstreet. 1982. *Prospect Reports, April, 1982.*

Environmental Protection Agency. 1981. *Background Document for the Financial Test & Municipal Revenue Test for Financial Assurance for Closure and Post-Closure Care.* EPA. 149 pp.

Standard and Poor's Corporation. 1979. *Standard and Poor's Rating Guide.* New York: McGraw Hill, Inc. p. 6.

IV. Procedural Matters

Paperwork Reduction Act

The information collection requirements in existing 30 CFR Part 800 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. These approvals were identified in "notes" at the introduction to 30 CFR Part 800. OSM would delete those "notes" and codify the OMB approvals under new § 800.10 that contains information collection requirements. OSM is requesting reapproval from OPMB for existing information collection requirements. This information collection was originally approved under Part 806.

The information required by § 800.23(a) and (c) would be collected and used by regulatory authorities in implementing the bonding responsibilities for surface and underground mining activities to ensure that companies have adequate financial ability to qualify for a self-bond. This information required by § 800.23(a) and (c) is mandatory of an operator who elects to self-bond its reclamation obligation. OSM would be responsible for collecting the information only when a Federal program is implemented for a State. Twenty-four states have had regulatory programs approved through which they may collect self-bonding information.

Executive Order 12291

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM has determined that these are not major rules and do not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules would not have a significant economic impact on a substantial number of small entities. The proposed rules may allow small coal operators increased flexibility in meeting the reclamation bonding requirement and may ease the bonding burden of small coal operators.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) on this proposed rule and has made an interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. A final EA will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 800

Coal mining, Insurance, Reporting and requirements, Surety bonds, Surface mining, Underground mining, Administrative practices and procedures.

30 CFR Part 806

Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 800 and 806 are proposed to be amended as set forth herein.

Dated: July 30, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. Section 800.23 is added to 30 CFR Part 800 to read as follows:

§ 800.23 Self-bonding.

(a) The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions are met:

(1) The applicant designates a suitable agent to receive service of process in the State where the proposed surface mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(i) The regulatory authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years.

(ii) The regulatory authority may exclude periods of interruption to the operation that were beyond the applicant's control when calculating the period of continuous operation. Such an exclusion shall relate to the applicant's likelihood of remaining in business during the mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) The applicant has a tangible net worth of at least $10 million. (Tangible net worth means total assets minus total liabilities and does not include intangibles such as goodwill, patents, royalties and trademarks); or

(iii) The applicant's tangible fixed assets in the United States total at least $20 million. Tangible fixed assets include plants and equipment, but do not include land and coal in place.

(4) The applicant submits a report from an independent certified public accountant on examination of the applicant's financial statements for the latest completed fiscal year. The report shall include any specific financial information requested by the regulatory authority, and the accountant's opinion of the applicant's ability to meet all obligations under the reclamation plan submitted under Subchapter G of this chapter.

(5) When a written guarantee for an applicant is submitted by a parent corporation guarantor, the guarantor meets the conditions of paragraphs

(a)(1) through (a)(4) of this section. Such a written guarantee shall be referred to as a "corporate guarantee." The parent corporation shall have a controlling interest in the applicant. The terms of the corporate guarantee must provide for the following:

(i) If the applicant fails to complete the reclamation plan, the guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan.

(ii) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.

(iii) The cancellation shall be accepted by the regulatory authority only if the applicant obtains suitable replacement bond before the cancellation date.

(b) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant shall not exceed 25 percent of the applicant's tangible net worth. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed subsidiary self-bonds shall not exceed 25 percent of the guarantor's tangible net worth.

(c) If the regulatory authority accepts an applicant to self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or parent corporations guaranteeing a subsidiary's self-bond shall submit indemnity agreements signed by two corporate officers who are authorized to bind the corporation and supported by a letter of consent by the corporation's board of directors authorizing entry into the agreement.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to § 808.13 of this chapter, the applicant or parent corporation guarantor shall be required to pay to the regulatory authority an amount necessary to complete the prescribed reclamation plan. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(d) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the parent corporation guarantor change so that they do not meet the criteria of paragraph (a)(3) of this section, the permittee shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

PART 806—FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE

§ 806.14 [Removed]

2. 30 CFR Part 806 and remaining § 806.14 are removed.

(Authority: Pub. L. 95–87; 30 U.S.C 1201 *et seq.*)

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