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REGULATIONS COMPILER

STATEMENT OF EMERGENCY

405 KAR 10:025E

The Kentucky Reclamation Guaranty Fund (KRGF) and Kentucky Reclamation Guaranty Fund Commission were established on March 22, 2013 with the signing of HB 66. Permits previously subject to the Kentucky Voluntary Bond Pool continued to receive subsidization of reclamation bonds upon entering the KRGF. If a large number of permits held by these entities were forfeited then the KRGF would suffer substantial losses. KRS 350.518(5) authorizes the cabinet to promulgate an administrative regulation to establish eligibility standards for applicants who wish to receive subsidization upon assuming liability for permits currently subsidized by the KRGF. The emergency regulation is necessary in order to prevent devastating losses to the KRGF by allowing entities that were not former bond pool members to assume responsibility for subsidized permits at the current subsidized level preventing forfeitures the KRGF may not be able to withstand. The emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor — Date 6/30/14

LEONARD K. PETERS, Secretary
Energy and Environment Cabinet — Date 6/30/14

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Office of the Reclamation Guaranty Fund

4 (New Emergency Administrative Regulation)

5 405 KAR 10:025E. Extension of Performance Bond Subsidization

6 RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.093, 350.095, 350.100,

7 350.110, 350.151, 350.465, 350.500 – 350.521

8 STATUTORY AUTHORITY: KRS 350.060, 350.062, 350.064, 350.093, 350.095,

9 350.100, 350.151, 350.465, 350.518(5)

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 authorizes the

11 Cabinet to promulgate administrative regulations to ensure bonds are adequate to perform

12 reclamation in the event of forfeiture. This administrative regulation establishes information related

13 to the operation of the Kentucky Reclamation Guaranty Fund.

14 Section 1. Applicability. This administrative regulation applies only to entities seeking to

15 obtain by transfer, the permit of a current member of the KRGF who was a member of the former

16 Kentucky Voluntary Bond Pool.

17 Section 2. Performance Bond Subsidization. (1) Performance bond subsidization may be

18 extended to an applicant who was not a member of the former voluntary bond pool fund prior to its

19 dissolution if the:

20 (a) Applicant intends to obtain its permit by transfer from a member of the former

21 Kentucky Voluntary Bond Pool;

1 (b) Permit to which the applicant intends to succeed meets one or more of the criteria for
2 the Cabinet to seek bond forfeiture under 405 KAR 10:050, Section 3;
3 (c) Applicant meets the requirements of this administrative regulation; and
4 (d) Commission determines it is in the best interest of the KRGF pursuant to KRS
5 350.509(1).
6 (2) If the Commission determines the criteria for performance bond subsidization
7 extension have been met, the bonds previously issued by the KRGF to the member of the former
8 voluntary bond pool fund shall be substituted for bonds newly issued by the KRGF in accordance
9 with the provisions of 405 KAR 10:015 Section 5.
10 (3) Subsequent to the extension of performance bond subsidization for the issuance of a
11 successor permit pursuant to subsection (2) of this section, the KRGF may extend additional
12 subsidization to the permittee for the permit to enable the permittee to complete mining and
13 reclamation operations, if the Commission determines it is in the best interest of the KRGF. The
14 Commission shall review an applicant's ability to meet the approval requirements of this
15 administrative regulation when an application for additional subsidization has been submitted.
16 (4) Only permits with bonds previously covered by the former voluntary bond pool fund
17 shall be eligible for performance bond subsidization. Other permits held by the applicant shall not
18 be subsidized by the KRGF.
19 Section 3. Applicant Criteria. (1) Applicants for extension of performance bond
20 subsidization shall submit an application on the Application for Performance Bond Subsidization
21 for Permit Succession, RGF-4 form, which shall include:
22 (a) Identification of the permittee which the applicant wishes to succeed;
23 (b) Identification of permits the applicant intends to obtain by transfer;

1 (c) Information regarding financial standing and compliance record of the applicant; and

2 (d) Any other information the Commission needs to make a determination.

3 (2) The Commission shall consider applications on a case-by-case basis and meeting the
4 criteria under this section may not be grounds for automatic performance bond subsidization. An
5 applicant shall be allowed thirty (30) calendar days after receipt of the Commission's
6 determination to contest the determination in writing.

7 (a) The written notice shall include:

8 1. An explanation of the nature of the contest; and

9 2. The documentation relied upon by the applicant.

10 (3) The applicant for extended performance bond subsidization must be in good financial
11 standing. The financial standing of the applicant shall be determined based upon the financial
12 information required in the application and other information available to the KRGF and the
13 Cabinet. The Commission shall consider the following financial ratios and related financial
14 information:

15 (a) The ratio of current assets to current liabilities;

16 (b) The ratio of net income to net sales;

17 (c) The ratio of total liabilities to stockholders' equity;

18 (d) The ratio of net income to owners' equity;

19 (e) The ratio of owners' equity to total assets; and

20 (f) The ratio of the sum of cash, marketable securities and net receivables, to current
21 liabilities.

22 (4) The applicant for extended performance bond subsidization shall have held, under the
23 same name or other name as provided in subsection (5) of this section, a permit issued by the

1 Cabinet to conduct surface mining operations in Kentucky or by an authorized agency governing
2 surface mining operations in another state or territory, for a period of at least five (5) of the seven
3 (7) years immediately preceding the application for extended performance bond subsidization, and
4 has exhibited an approved compliance record as detailed by Section 4 of this administrative
5 regulation.

6 (5) If the applicant cannot satisfy the requirements of subsection (4) of this Section, then
7 the following types of permits held by persons other than the applicant may be used to satisfy those
8 requirements:

9 (a) Permits issued to a person who owns fifty (50) percent or more of the applicant;

10 (b) Permits issued to a person who is owned fifty (50) percent or more by a person meeting
11 the requirements of subsection (4) of this section; or

12 (c) Permits issued to persons whose combined ownership of the applicant is fifty (50)
13 percent or more, provided each person meets the requirements set forth in subsection (4) of this
14 section.

15 Section 4. Determination of Compliance Record

16 (1) An applicant shall be deemed to have an approved compliance record if the applicant,
17 each person who owns or controls the applicant, each person who is owned or controlled by the
18 applicant, and each person who is under common ownership and control with the applicant meet
19 all the following criteria:

20 (a) Has never committed a violation for mining without having first obtained the required
21 permit;

22 (b) Has never forfeited a bond or had a permit revoked;

1 (c) Has never avoided forfeiture of a bond because a surety performed reclamation work in
2 order to avoid forfeiture;
3 (d) Has never been determined to have demonstrated a pattern of violations;
4 (e) Has not been issued more than one (1) order for cessation and immediate compliance
5 for failure to complete required remedial measures in the most recent thirty-six (36) months of
6 operation and the order was abated as ordered in a timely manner and was not for a violation of
7 contemporaneous reclamation requirements under 405 KAR 16:020 or 18:020 or other applicable
8 state or federal statute or regulation;
9 (f) Has not been issued more than one (1) order for cessation and immediate compliance for
10 creating an imminent danger to the health and safety of the public or causing significant, imminent
11 environmental harm in the most recent thirty-six (36) months of operation and the order was abated
12 as ordered in a timely manner;
13 (g) Has not committed more than one (1) violation of contemporaneous reclamation
14 requirements under 405 KAR 16:020 or 18:020 or other applicable state or federal statute or
15 regulation in the most recent thirty-six (36) months of operation and the violation was abated in a
16 timely manner, except the Commission may for good cause and by unanimous vote exclude
17 violations that have been terminated with no civil penalty;
18 (h) Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR
19 Chapters 7 through 24 or other applicable state or federal statute or regulation on any one (1)
20 permit in any twelve (12) month period of the most recent thirty-six (36) months of operation,
21 except the Commission may for good cause and by unanimous vote exclude the twelve (12) month
22 period on one (1) permit during which the largest number of violations occurred and may for good

1 cause and by unanimous vote exclude violations that were timely abated and terminated with no
2 civil penalty; and
3 (i) Has not had civil penalties remaining unpaid more than thirty (30) days after they were
4 due and payable, within the most recent thirty-six (36) months of operation.
5 (2) To the extent the information is available, the Commission may take into account the
6 performance of the applicant and each person who owns or controls, is owned or controlled by, or
7 is under common ownership or control with the applicant, in other states and on federal lands and
8 Indian lands under criteria similar or equivalent to those in this section.
9 Section 5. Compliance Review for Continued Subsidization. The Commission shall
10 review the compliance record of former applicants for extended bond subsidization. If the
11 Commission determines that the permittee no longer satisfies any of the criteria in Section 4(1), it
12 may advise the Cabinet that the permittee is no longer eligible for performance bond subsidization.
13 Upon receipt of such notice, the cabinet shall immediately order the permittee to cease surface coal
14 mining operations on that permit until it has obtained alternate bond coverage. During such period
15 of cessation, the permittee shall maintain the permit in compliance with the requirements of KRS
16 Chapter 350 and 405 KAR Chapters 7 through 24.
17 Section 6. Permit Specific Bond. (1) For each permit obtained by transfer from a member
18 of the former voluntary bond pool fund, a permit-specific bond at a rate determined by the
19 Commission but no less than $2,000 per acre shall be posted.
20 (2) Permit specific bonds posted pursuant to this section shall be released in accordance
21 with the provisions of 405 KAR 10:015, Section 2.
22 Section 7. Incorporation by Reference.

1 (1) "Application for Performance Bond Subsidization for Permit Succession", April 2014,
2 is incorporated by reference.
3 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
4 law, at the Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky
5 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

405 KAR 10:025E approved for filing.
Pages (1-7)

6/30/14

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 405 KAR 10:025E
Contact Person: Michael Mullins, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria necessary for entities to qualify to receive performance bond subsidies when a permit that was in the former voluntary bond pool is transferred to them. The administrative regulation applies only to entities seeking to obtain by transfer the permit of a current member of the Kentucky Reclamation Guaranty Fund (KRGF) who was a member of the former Kentucky Voluntary Bond Pool.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the qualifying criteria for extended performance bond subsidization of permits when transferred from members of the former voluntary bond pool to KRGF members that were not former voluntary bond pool members.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 350.518(5) authorizes the Kentucky Reclamation Guaranty Fund Commission (KRGFC) to establish eligibility standards for entities interested in seeking to obtain by transfer the permit of a current member of the KRGF who was a member of the former Kentucky Voluntary Bond Pool.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the criteria authorized by KRS 350.518(5).

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could impact the 261 KRGF members.

(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: This administrative regulation will require the entities that desire to transfer current permits from former voluntary bond pool members to meet certain criteria in order to receive performance bond subsidization of the transferred permit under the KRGF.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each permittee will vary depending on the amount of reclamation bond required in order to transfer the permit. There will be no cost to members of the KRGF not involved in the permit transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By meeting the criteria of this administrative regulation the entity will receive performance bond subsidization of the permit that was transferred from the former voluntary bond pool. Members of the KRGF not involved in the permit transfer will benefit from the avoidance of bond forfeitures and the resulting withdrawals of KRGF assets to complete reclamation of the permits.

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

(a) Initially: This new administrative regulation will not significantly increase the cost to the Office of the Reclamation Guaranty Fund (ORGF).

(b) On a continuing basis: Future costs would remain essentially unchanged for this function in the ORGF.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal funds and restricted funds will be used.

(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: There will not be a need to increase fees or funding related to this proposed administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not increase or establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All entities that desire continued performance bond subsidization of former voluntary bond pool permits upon transfer will be required to meet the same criteria.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Admin. Regulation No. 405 KAR 10:025E
Contact Person: Michael Mullins, Regulation Coordinator

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits, Division of Mine Reclamation and Enforcement, Office of the Reclamation Guaranty Fund, and the KRGFC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 350.060, 350.062, 350.064, and the provisions of KRS 350.518(5).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate any new revenue for the state or local government. This administrative regulation could impact coal severance tax contributions to counties. The proposed administrative regulation may result in continued mining on permits that would normally have been forfeited and considered sterilized. However, the agency would be unable to predict the amount of revenue generated due to the uncertainty of the number of permits that may be transferred.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate revenue in subsequent years. This administrative regulation could impact coal severance tax contributions to counties. The proposed administrative regulation may result in continued mining on permits that would normally have been forfeited and considered sterilized. However, the agency would be unable to predict the amount of revenue generated due to the uncertainty of the number of permits that may be transferred.

(c) How much will it cost to administer this program for the first year? The total expenditures for the ORGF is estimated at $600,000.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged for operation of the ORGF.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA
Expenditures (+/-): NA

Other Explanation: NA

DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE
405 KAR 10:025E

This administrative regulation incorporates the following documents:

I. Application for Performance Bond Subsidization for Permit Succession, Form RGF-4, (April 2014). KRS 350.518(5) allows entities receiving permits that were formerly part of the voluntary bond pool to receive continued subsidization of the performance bond as long as they meet the requirements of this administrative regulation. Applicants for extension of performance bond subsidization are required to submit the application form. This is a new form for use by applicants for continued performance bond subsidization. This form consists of 10 pages.