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Office of Surface Mining Reclamation and Enforcement to Initiate Rulemaking on Self-Bonding for Coal Mines

Washington, DC – In response to the increased market volatility in the coal industry, and recent bankruptcies and increasing public concerns, the [Office of Surface Mining Reclamation and Enforcement \(OSMRE\)](#) announced today it will [begin the rulemaking process](#) to strengthen regulations on self-bonding to help ensure that companies are financially able to restore lands disturbed by coal mining when extraction operations are completed.

“The U.S. coal market is dramatically different from when our self-bonding regulations were last updated 30 years ago,” said [OSMRE Director Joe Pizarchik](#). “This is a turbulent time of energy transformation in our country, of declining use of coal and increased use of cheaper natural gas and renewable energy. These conditions have exposed the limitations of the current self-bonding rule and we have a responsibility to protect the public’s interest by keeping up with these changes.”

The rulemaking decision follows a [citizen’s petition from WildEarth Guardians](#) asking OSMRE to consider amending its regulations on financial assurances, specifically to prevent coal companies with a history of financial insolvency, and their subsidiaries, from using “self-bonding” as a means to ensure disturbed lands are restored after mining operations are completed.

The [Surface Mining Control and Reclamation Act \(SMCRA\)](#) defines three major types of bonds to ensure reclamation is carried out: corporate surety bonds; collateral bonds (such as cash or certificates of deposit); or self-bonds, which are legally binding corporate promises without separate surety or collateral, available only to permittees who meet certain financial tests.

OSMRE received more than 117,000 comments during an extended public comment period on the WildEarth Guardians’ petition that ended on July 20, the vast majority of commenters favoring a rulemaking. Based on those comments and a thorough analysis of current market conditions supported by Energy Information Agency data, OSMRE determined that the petitioners set forth facts, technical justification and law establishing a reasonable basis for amending its self-bonding regulations.

While the petition provides a starting point, OSMRE’s rulemaking will explore revisions that will go beyond the language suggested by the petitioners.



Director Pizarchik laid out the goals for the rulemaking, including:

- Modify self-bonding eligibility standards, including for parent and other corporate guarantors, to include criteria that are more forward looking, instead of only focusing narrowly on past performance.
- Provide for an independent third party review of self-bonded entities' annual financial reports and certification of the current and future financial health of self-bonded entities.
- Establish the percentage of all self-bonds to be supported by collateral that is not subject to any other lien or used as collateral for any other liability.
- Provide diversification for financial assurance/reclamation bonds for each mine to prevent a single entity from providing 100% of the bond for a mine (except for cash bonds).
- Provide regulatory authorities with better tools for obtaining replacement bonds when a self-bonding entity no longer meets the self-bonding eligibility criteria.
- Minimize the risks associated with corporate sureties that rely on a cash flow basis to cover the cost of reclamation when its bonds are forfeited.

OSMRE will also explore the possibility of new financial assurance instruments to provide the coal industry with more financial assurance options to enhance flexibility, and the creation of incentives for mine operators to complete timely reclamation and apply for final bond release, including a financial assurance release schedule. In the coming days OSMRE will file a Federal Register Notice officially announcing its intent to start rulemaking on self-bonding.

OSMRE will seek input from state regulatory authorities and other stakeholders for suggestions on how to improve self-bonding regulations to make it easier for State regulatory authorities to ensure they have adequate financial assurance to complete reclamation of each mine. While OSMRE directly regulates surface coal mining and reclamation activities in 12 states, there are 24 states that have primacy for surface coal mining regulation –they have developed and obtained Secretarial approval of regulatory programs that meet SMCRA requirements and are no less effective than the federal regulations in achieving those objectives.

“We know more today about financial assurance than 35 years ago and our current out-of-date self-bonding regulations aren’t working as intended,” Pizarchik said. “Together with state regulatory authorities that allow, or are considering allowing self-bonds as a form of financial assurance, we can write a better rule, and together we can protect the public’s interest and the environment.”

Today’s announcement builds on OSMRE efforts to address the self-bonding issue, most recently issuing the first-ever [Director’s Policy Advisory](#) that provided guidance to state agencies that regulate surface coal mining on the restricted use of self-bonding. The Policy





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Advisory also provided recommendations for surety requirements, and cash or collateral bonds to ensure that coal companies have adequate financial resources to properly restore lands disturbed by surface mining activity.

[Click here to view Director Pizarchik's statement](#) on self-bonding rulemaking in its entirety.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) carries out the requirements of the Surface Mining Control and Reclamation Act of 1977 in cooperation with states and tribes. OSMRE's objectives are to ensure that coal mining activities are conducted in a manner that protects citizens and the environment during mining, to ensure that the land is restored to beneficial use after mining, and to mitigate the effects of past mining by aggressively pursuing reclamation of abandoned coal mines. For instant updates on OSMRE, follow the bureau's Twitter feed [@OSMRE](#).

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