



Ohio Administrative Code

Rule 1501:13-7-03 Form, conditions, and terms of performance security.

Effective: February 14, 2022

(A) Form of the performance security. The performance security to be submitted by the applicant or permittee shall be on forms furnished by the chief. The chief shall allow for:

- (1) A surety bond;
- (2) A collateral bond;
- (3) A trust fund; or
- (4) A combination of any of these forms of performance security.

(B) Terms and conditions of the performance security.

(1) The performance security shall be in an amount determined by the chief, as provided in paragraphs (A) and (C) of rule 1501:13-7-02 of the Administrative Code for permits for which the applicant or permittee provides performance security together with reliance on the reclamation forfeiture fund, or as provided in paragraphs (B) and (C) of rule 1501:13-7-02 of the Administrative Code for permits for which the applicant or permittee provides performance security without reliance on the reclamation forfeiture fund.

(2) The performance security shall be payable to the state and conditioned upon the faithful performance of all the requirements of Chapter 1513. of the Revised Code, rules adopted thereunder, and the provisions of the applicant's approved mining and reclamation plan.

(3) The name of the permittee on the performance security shall be identical to the name of the permittee on the permit.

(4) The duration of the performance security shall be that described in paragraph (D) of rule



1501:13-7-02 of the Administrative Code.

(5) Surety bonds shall be subject to the following conditions:

(a) The chief shall not accept the bonds of a surety company unless the bond is noncancellable by the surety at any time for any reason including, but not limited to, non-payment of premium or bankruptcy of the permittee during the period of liability;

(b) The chief shall not accept a surety bond in excess of ten per cent of the surety company's capital surplus account;

(c) The chief shall not accept a surety bond from a surety company for any operator if the sum of such bond and all other surety bonds issued by the surety company on any and all the permits of that operator is in excess of thirty per cent of the surety company's capital surplus account;

(d) The surety bond shall be issued by a corporate surety licensed to do business in Ohio;

(e) The chief may provide in the bond that the amount shall be confessed to judgment upon forfeiture as provided in section 2323.13 of the Revised Code;

(f) The bond shall provide that the surety and the permittee shall be jointly and severally liable; and

(g) The bond shall provide that:

(i) The surety will give prompt notice to the permittee and the chief of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violation of regulatory requirements which could result in suspension or revocation of the surety's license to do business; and

(ii) In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the chief.

(6) Collateral bonds, except for letters of credit, shall be subject to the following conditions:



- (a) The chief shall deliver to the treasurer of state all collateral deposited by the permittee or applicant to be held until authorized for release or replacement as provided in these rules. The treasurer shall hold it in trust for the purposes for which it has been deposited;
- (b) The chief shall value collateral at their current market value, not face value;
- (c) The chief shall not accept a certificate of deposit unless it is payable to the state, both in writing and upon the records of the bank issuing such certificates;
- (d) The chief shall not accept an individual certificate or cash account for a denomination in excess of the maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.;
- (e) If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association shall be licensed and operating in Ohio;
- (f) A certificate of deposit shall be automatically renewable and issued with a maturity date of not less than twelve months;
- (g) At the time a certificate of deposit is being closed and rolled over into a new certificate of deposit, the permittee shall notify the chief of any change of account numbers by submitting a revised collateral bond indemnity agreement form;
- (h) The chief shall require the applicant to deposit sufficient amounts of certificates of deposit to assure that upon forfeiture the chief will be able to liquidate those certificates prior to maturity for the amount of the performance security required by rules 1501:13-7-01 to 1501:13-7-06 of the Administrative Code; and
- (i) Certificates of deposit may be substituted for a cash account with the approval of the chief.
- (7) Letters of credit shall be subject to the following:



- (a) The letter may only be issued by a bank organized or authorized to do business in Ohio;
- (b) The initial term of the letter of credit shall be for not less than one year from the issue date and shall be automatically renewable for a period of not less than one year from the scheduled expiration date, unless the bank notifies the chief by certified or registered mail at least sixty days before the expiration date that the bank will not renew the letter of credit. Upon notice of a bank's intent not to renew the letter of credit, the permittee shall replace performance security at least thirty days before the expiration date of the letter of credit agreement with other letters of credit, other forms of security supporting the collateral bond indemnity agreement, or another form of performance security. If the letter of credit is not replaced at least thirty days prior to the expiration date, the chief shall demand and obtain payment on it before it expires;
- (c) The letter shall be payable to the state, in part or in full, upon written demand by the chief and, except as provided in paragraph (B)(7)(b) of this rule, accompanied by a written statement signed by the chief declaring one or more of the following:
- (i) That the permittee has not faithfully performed all of the requirements of Chapter 1513. of the Revised Code, rules adopted thereunder, and the provisions of the permittee's approved mining and reclamation plan;
 - (ii) That the permittee has failed to replace performance security coverage in accordance with the requirements of paragraph (B)(7)(b) of this rule; or
 - (iii) That the permittee has failed to replace performance security at least thirty days prior to the expiration date of the letter of credit.
- (d) The chief may require in the indemnity agreement that the amount shall be confessed in judgment upon forfeiture as provided in section 2323.13 of the Revised Code; and
- (e) The letters of credit shall provide that:
- (i) The bank will give prompt notice to the permittee and the chief of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory



requirements which could result in suspension or revocation of the bank's charter or license to do business; and

(ii) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the chief.

(8) The estimated bond value of all collateral provided as performance security assurance under paragraphs (B)(6) and (B)(7) of this rule shall be subject to a margin, which is the ratio of bond value to market value, as determined by the chief. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the chief in performing reclamation. The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and if necessary, the performance security amount increased or decreased.

(9) Persons with an interest in a collateral bond provided as performance security, and who desire notification of actions pursuant to the collateral bond, shall request the notification in writing to the chief at the time collateral bond is offered.

(10) Trust funds for performance security under this rule shall be subject to the following conditions:

(a) The trust fund shall be in an amount equal to the estimated cost of reclamation as determined by the chief under paragraph (B) of rule 1501:13-7-01 of the Administrative Code excluding all cost of administration of the trust fund;

(b) The trust fund agreement shall be in a form approved by the chief and shall contain all terms and conditions required by the chief;

(c) The chief shall specify the investment objectives of the trust fund;

(d) Termination of the trust fund may occur only as specified by the chief upon a determination that no further reclamation is necessary, that replacement performance security has been filed, or that the administration of the trust fund in accordance with its purpose requires termination;



(e) Release of money from the trust fund may be made only upon written authorization of the chief or according to a schedule established in the agreement accompanying the trust fund; and

(f) A financial institution or other company serving as a trustee must be a bank, trust company or other financial institution with trust powers that is organized or authorized to do business in Ohio.

(11) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this rule becomes incapacitated by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without performance security coverage in violation of paragraph (A) of rule 1501:13-7-01 of the Administrative Code and shall promptly notify the chief. The chief shall notify, in writing, any permittee who is without performance security to submit a plan for replacement performance security within thirty days after receipt of such notice from the chief. If performance security is not replaced within the period set forth in paragraph (B)(11)(a) or (B)(11)(b) of this rule, the permittee shall cease all coal extraction being conducted under the permit and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining shall not resume until the chief has determined that an acceptable performance security has been filed in accordance with paragraph (A) of rule 1501:13-7-01 of the Administrative Code.

(a) For a permit for which performance security is provided without reliance on the reclamation forfeiture fund in accordance with paragraph (C)(1) of rule 1501:13-7-01 of the Administrative Code, the permittee shall provide the replacement performance security within ninety days after receipt of written notice from the chief that the permittee is without performance security.

(b) For a permit for which performance security is provided together with reliance on the reclamation forfeiture fund in accordance with paragraph (C)(2) of rule 1501:13-7-01 of the Administrative Code, the permittee shall continue to pay the severance tax levied under division (A)(8) of section 5749.02 of the Revised Code and shall provide the replacement performance security within one year after receipt of written notice from the chief that the permittee is without performance security.

(C) Replacement of performance security.

(1) The chief may allow the permittee to replace existing performance security with other



performance security, if the liability which has accrued against the permittee on the permit area is transferred to such replacement performance security and the replacement performance security meets the requirements of these rules.

(2) The chief shall not release existing performance security until the permittee has submitted and the chief has approved acceptable replacement performance security. A replacement of performance security pursuant to paragraph (C) of this rule shall not constitute a release of performance security.