



U.S. Department of the Interior
Bureau of Land Management

Financial Guarantees Required for Exploration and Mining Under the 1872 Mining Law

Frequently Asked Questions





Introduction

The Bureau of Land Management (BLM) administers approximately 245 million acres of public lands, mostly in the western states, and approximately 710 million acres of subsurface minerals nationwide. In accordance with the Federal Land Policy and Management Act of 1976, public lands are managed under the principles of multiple use and sustained yield. The BLM mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The BLM manages public lands for a variety of uses, including livestock grazing, energy and mineral development, wildlife habitat, and outdoor recreation, while conserving natural, cultural, and historic resources.

Certain uses of the public lands must conform to requirements in applicable laws and regulations. Hardrock mining is one such use. Mineral exploration and extraction activities that disturb the surface of the land are subject to surface management regulations (43 CFR 3809). For any activity beyond casual use, as defined in the regulations, operators are required to file a notice of their operation (for exploration on less than 5 acres) or a plan of operations (plan) with the BLM. The designated operator is also responsible for reclamation of any land that is disturbed, for which a cost estimate and a financial guarantee must be submitted to the BLM.

The regulations at 43 CFR 3809.500 refer to “financial guarantees” (also referred to as “financial instruments”) that are required when conducting operations under a notice or a plan of operations. The list of acceptable financial guarantees are (a) surety bonds, (b) cash, (c) irrevocable letters of credit, (d) certificates of deposit or savings accounts, (e) certain securities or bonds, and (f) insurance. The term financial guarantee is broader than the term bond, as

a financial guarantee includes a surety bond and also the types of financial pledges required to secure a personal bond. For BLM purposes, mining operations require one of two types of bonds: a surety bond, for which the surety company insures performance by the operator of its obligations to the BLM, or a personal bond, which must be secured with a financial pledge of one of the remaining types of financial guarantees (b through f on the previous page). In this pamphlet, the term bond is used generically to refer to surety bonds and/or personal bonds secured by a financial pledge of one of the other types of financial guarantees.

This pamphlet lists frequently asked questions from the public, followed by BLM responses to those questions. It does not address the process for reviewing reclamation cost, which is handled by the BLM field office where the notice or plan is filed. Additional information about the financial instruments is available in the Code of Federal Regulations (43 CFR 3809) or from a local BLM office.



Frequently Asked Questions

1. What is a bond?

A bond is a written contract to guarantee that the lands disturbed from hardrock mining activities will be reclaimed. A bond is required for any notice or plan that is filed according to the surface management regulations in 43 CFR 3809.

2. What is a performance bond?

The general type of bond required by the BLM is a performance bond, which protects against loss due to the inability or refusal of an operator to perform the required reclamation. The two types of performance bonds that may guarantee reclamation as described in the notice or plan are a personal bond or a surety bond.

3. What is a personal bond, and how do I obtain one and submit it to the BLM?

A personal bond is a written document in which the obligor (operator) formally recognizes an obligation to pay money or to do a specific act. The operator must complete BLM Form 3809-2, "Surface Management Personal Bond," and obtain one of the following acceptable financial instruments from a bank, credit union, or federal savings and loan, as stated in the regulation (43 CFR 3809.555):

- A guaranteed remittance in U.S. dollars (e.g., cashier's check, money order, cash, official bank check).
- A certificate of deposit or other fixed-time deposit account.

- An irrevocable letter of credit.
- U.S. Treasury securities (bills, notes, or bonds).

The signatory on personal bonds must be acknowledged by a notary. The bond and corresponding financial instrument (which may be sent by the bank) may or may not be submitted to the BLM at the same time.

4. What is a surety bond, and how do I obtain one and submit it to the BLM?

A suretyship (surety) bond is a contractual arrangement among the surety, the principal (operator), and the obligee (BLM) whereby the surety agrees to protect the obligee if the principal defaults in performing the principal's contractual obligations (reclamation). The bond is the instrument which binds the surety. The operator must complete BLM Form 3809-1, "Surface Management Surety Bond," and should contact an insurance agent to find a federally acceptable surety company. A corporate surety must be certified by the U.S. Department of the Treasury (see Treasury Circular 570). Surety bonds must be accompanied by the surety's power of attorney.

5. Must the operator be on the bond?

The operator, as named in the notice or plan filed with the BLM field office having jurisdiction over the lands where the mining operation is situated, must be covered by the bond. The operator must be the bond principal, a bonded coprincipal, or covered by a bond that is submitted by another entity (third-party bond). A third-party bond must have a completed bond rider from the third party (BLM Form 3809-4), which identifies the operator as being covered under the bond. Please note that the person named as the "contact" for the operator is not the "operator."

6. Who is the bond principal?

The bond principal is defined as the person (legal entity) primarily liable, for whose performance of their obligation the guarantor or the surety has become bound. The operator is primarily liable for reclamation on the operations and is typically the bond principal.

7. Who should execute (sign) the bond?

The bond must be executed (signed) by the bond principal. Typically, the bond principal is the operator, in which case the bond must be executed (signed) by the operator. When the operator is a corporation, partnership, or other legal business entity, the bond must be executed by an officer of the corporation or other person who has the authority to financially bind the operator. The signatory authority must be according to a current power of attorney or the articles of incorporation or other business documents as filed with the BLM state office in the state where the mining operation is situated.

If the bond is posted by an entity on behalf of the operator, known as a third-party bond, the third party would execute the bond. In addition to the bond, Form 3809-4 must be submitted, which shows the third party is posting the bond with the BLM on behalf of the operator of record.

An agent, resident agent, owner of the mining claim, or other such individual is not an acceptable signatory for a bond unless there is a specific legal designation, such as a power of attorney, which gives the individual the capacity to bind the operator financially.

The operator remains financially responsible for reclamation of a mining operation, regardless of who executes the bond.

8. What must the bond guarantee?

The bond must guarantee reclamation as described in the notice or plan.

9. Where do I submit my bond?

The surety bond or the personal bond and financial assurance can be sent either by mail or courier service or delivered in person to the BLM state office in the state where the notice or plan is filed (the financial assurance may be sent by the bank). Personally delivering the bond to the BLM will not affect the bond acceptance time. Current BLM state office addresses are listed in this pamphlet and are also available on the BLM website at www.blm.gov.

10. When do I submit my bond?

A bond may be submitted anytime before operations begin. It is not necessary to wait for the BLM field office to review the estimated reclamation cost or to issue a decision as to the amount of the financial guarantee/bond before submitting the bond to the proper BLM state office. Acceptance of the bond can occur before the BLM reviews the notice or plan or before the BLM issues a decision on the required bond amount. After the BLM field office determines the required bond amount for an operation, the bond amount committed will be adjusted, if necessary. For this reason, a bond may be submitted for more than estimated in case a greater amount is required by the BLM field office after reviewing the reclamation cost estimate. Note: Refer to question 21 for actions that must occur before surface disturbing operations may begin.

11. How much is the required bond amount?

The bond amount must be equal to or greater than the reclamation cost estimate as determined by the BLM field office that received the notice or plan. The

required bond amount is expressed in whole dollars and is rounded up to the next \$100.

A bond for more than the amount currently required can be submitted. If there is an uncommitted balance on the bond, it can be applied toward increases to the bonding requirement in the future without requiring additional information or paperwork.

12. How many bonds can I submit? How can I increase my bond?

The operator's bonding requirement may be met by a single bond, by a single bond with multiple financial instruments as pledges for the bond, or by multiple bonds. Multiple bonds may be accepted from various entities.

If an operator would like to increase a bond amount or if an increase is required because no funds remain available under the current bond, an additional bond may be submitted, or a rider (Form 3809-4a) and additional funds to increase the current bond may be submitted.

13. Can I submit a statewide bond?

Yes. Any operator can submit a bond for any coverage—individual, statewide, or nationwide—that the operator desires. An individual bond covers only a single operation. A statewide bond can cover any and all operations in one state up to the amount of the bond. A nationwide bond can cover any and all operations in more than one state. The amount of a statewide or nationwide bond must be sufficient to cover the reclamation of all the operations to which it applies. A change in the bond coverage, for example, from individual to statewide coverage, can be accomplished by submitting a rider to an existing bond; filing a new bond is not required.

14. If I have a statewide bond and the BLM has determined the obligated bond amount for a new or existing operation is inadequate, do I need to ask the BLM to apply additional funds from my bond?

No. If there is an uncommitted balance under the existing bond that is available to be obligated, the BLM will automatically obligate additional funds from the bond for a reclamation cost increase required for existing operations or for newly filed operations upon determination of the necessary additional bond amount.

15. What is a rider and when might I need one?

A rider is a document that attaches to the bond, as part of the bond, which must be submitted to the BLM for material changes to the bond. These changes may include the following:

- The surety bond (Form 3809-1) or the personal bond (Form 3809-2) and the financial instrument are not from the operator. In this case, submit Form 3809-4 for a third-party rider.
- The operator decreases or increases the amount of the bond (submit Form 3809-4a “Surface Management Personal Bond Rider”).
- The operator changes the coverage of the bond from individual coverage (single operation) to statewide or nationwide coverage (submit Form 3809-4a).
- The bond form (Form 3809-2) is from the operator, but the financial instrument (e.g., a letter of credit) is not from the operator. In this case, the entity providing the financial pledge to secure the bond should also submit Form 3809-4a.

16. How long does it take to get a bond accepted?

In most cases, the documents (Form 3809-1 or Form 3809-2 and the financial instrument) will be examined within 15 days of receipt by the BLM state office. If the documents are found to be satisfactory, a bond acceptance decision will be issued. Acceptance may take longer if additional information is needed from the BLM field office or the state or if the bond or the financial instrument needs to be corrected by the principal, financial institution, or surety.

Acceptance of the bond can occur before the BLM reviews the notice or plan or before the BLM determines the required bond amount. After the BLM field office determines the required bond amount for an operation, the bond amount committed will be adjusted, if necessary. For this reason, a bond may be submitted for more than estimated in case a greater amount is required by the BLM field office after reviewing the reclamation cost estimate.

17. Can a cash bond be processed faster than other personal bonds or a surety bond?

A cash bond is a personal bond (Form 3809-2) that is secured by a guaranteed remittance in U.S. dollars (such as a cashier's check, certified check, official bank check, money order, wire transfer of \$50,000 or less, credit card payment, or cash). The guaranteed remittances are deposited by the BLM into a federal depository account.

Acceptance of a cash bond can be delayed if additional information is required or corrections need to be made. Be advised that a bond submitted with a personal check (including a company check) or a foreign check will be returned without action being taken by the BLM.

18. What may cause additional information to be required or the bond to be rejected?

Additional information may be needed or the bond may be rejected if:

- The coverage of the bond is missing or conflicting.
- The bond was executed by a person not having the authority to financially bind the bond principal.
- The written amount of the bond is missing or is not spelled correctly.
- The bond signature(s) is missing or not properly notarized.
- The bond was submitted on an outdated bond form.
- The bond principal is not the operator of record according to a notice or plan that has been filed with the BLM field office.

19. How will I know when my bond has been accepted?

The BLM reviews and processes the bond and financial instrument to ensure the documents satisfy the bonding requirements and to protect the interests of the taxpayer. The BLM will issue a decision of its findings, which is sent to the bond principal, surety, bank, operator, BLM field office, and state, as required. If necessary, the BLM will contact the surety, bond principal, bank, and others as required to obtain additional information.

20. If the BLM reduces my required bond amount, do I have to submit a new bond for the reduced amount?

No. The amount obligated under the current bond(s) will be reduced by the BLM state office and the operator will then have an uncommitted bond amount

available for additional operations. If funds that secure the bond should be reduced or refunded, please call the BLM state office that has jurisdiction over the lands where the mining operation is situated. Some financial instruments can be reduced (e.g., letter of credit, funds held by the BLM) while others cannot (e.g., CD, other fixed-time deposit accounts). The amount of bonding submitted is entirely up to the operator as long as the minimum amount of the bond meets the bond amount required by the BLM field office's authorized officer.

21. When can I begin operations?

The BLM field manager is typically designated as the authority that notifies when operations may begin under a notice or a plan or a modification of such. However, under no circumstances may operations commence until a satisfactory bond is accepted and the funds are obligated by the BLM state office for the designated notice or plan.

After the BLM receives the operator's cost estimate, the following actions must occur before surface disturbing operations may begin:

- The BLM reviews and determines the bond amount necessary to guarantee reclamation of the portion of operations on which surface disturbing activities will be conducted.
- The BLM determines if the accepted bond is sufficient to guarantee reclamation of the portion of operations that will disturb the surface.
- The BLM determines if the necessary financial instruments have been executed.
- The BLM approves the notice or plan of operations.
- The BLM obligates the guarantee for the portion of operations that will disturb the surface.

22. Where can I get the bond forms and other bond information? Are they available on a website?

Bond forms and other bond information may be obtained from any BLM office. Forms are also available on the BLM website at <https://www.blm.gov/services/electronic-forms>. Select “FLUID AND SOLID MINERALS, MINING CLAIMS.” From there, the forms are listed both by number and title. In addition, the BLM state offices have websites with more information. These sites are available from the BLM website home page at www.blm.gov.







BLM State Offices

Alaska State Office

222 W. 7th Avenue, #13
Anchorage, AK 99513
(907) 271-5960

Arizona State Office

One North Central Ave.
Suite 800
Phoenix, AZ 85004
(602) 417-9200

California State Office

2800 Cottage Way
Suite W1623
Sacramento, CA 95825
(916) 978-4400

Colorado State Office

2850 Youngfield Street
Lakewood, CO 80215
(303) 239-3600

Eastern States Office

5275 Leesburg Pike
Falls Church, VA 22041
(703) 558-7754

Idaho State Office

1387 South Vinnell Way
Boise, ID 83709
(208) 373-4000

Montana/Dakotas State Office

5001 Southgate Dr.
Billings, MT 59101
(406) 896-5004

Nevada State Office

1340 Financial Blvd.
Reno, NV 89502
(775) 861-6500

New Mexico State Office

301 Dinosaur Trail
Santa Fe, NM 87508
(505) 954-2000

Oregon/Washington State Office

P.O. Box 2965
Portland, OR 97208
(503) 808-6001

Utah State Office

440 West 200 South
Suite 500
Salt Lake City, UT 84101
(801) 539-4001

Wyoming State Office

5353 Yellowstone Road
Cheyenne, WY 82009
(307) 775-6256

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BLM/WO/GI-06/025+3504+REV21

