

FLUID MINERALS BOND PROCESSING USER GUIDE

Keywords

I. Bonding Requirements, General

A. When Bond Coverage is Required

Bond coverage is required prior to the BLM approval of any lease development involving surface disturbance related to drilling operations, i.e., prior to approval of an Application for Permit to Drill (APD). When a change of operator on a Federal lease comes to the attention of the Field Office Fluid Mineral Operations staff, it must determine that the new operator is properly bonded under the current regulations before officially recognizing the new operator (see 43 CFR 3162.3(a)). Bond coverage must be continued in full force and effect until all the terms and conditions of the entire leasehold covered by the bond have been met. This includes complete and timely plugging of all wells, reclamation of the lease area, the restoration of any lands or surface waters adversely affected by lease operations after the cessation or abandonment of oil or gas operations on the lease have been completed, and when all royalty obligations, including compensatory royalty, have been met.

BOND COVERAGE
REQUIREMENTS

Oil and gas bonds do **not** extend coverage to any off-lease facilities or rights-of-way off the leasehold.

OIL AND GAS BOND
DOES NOT COVER
OFF-LEASE
RIGHTS-OF-WAY

Bond coverage is not required for producing leases that do not contain a well, e.g., leases receiving only allocated production. However, such leases normally are covered by an existing statewide, nationwide, or unit bond in which the principal holds an interest in the involved leases. Should the MMS request that the BLM demand payment for royalty-related obligations for such leases, the BLM is not precluded from demanding payment because such leases are included in the terms of a statewide, nationwide, or unit bond.

A separate bond is **not** required for protection of a private surface owner since protection of the surface owner, who has a statutory right to compensation in connection with a reservation of oil and gas deposits to the United States, is already provided by the Federal oil and gas lease bond. In cases where the surface owner does not have such a statutory right, compensation or reparation is a matter for private resolution between the surface owner and the lessee or operator. (See also Sections XXI.A and XXI.B, below).

BOND COVERAGE
FOR PRIVATE
SURFACE OWNER
PROVIDED BY
OIL AND GAS BOND

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Holders of individual, statewide, or nationwide oil and gas lease bonds are allowed to conduct geophysical exploration on their leaseholds without further bonding coverage. Holders of statewide or nationwide lease bonds wishing to conduct geophysical exploration on lands they do **not** have under lease may obtain a rider to their bond to include exploration operations. The holder of a nationwide oil and gas lease bond may obtain a rider to include coverage of oil and gas exploration within the NPR-A.

GEOPHYSICAL
EXPLORATION
COVERAGE -
RIDER REQUIRED
FOR LANDS NOT
UNDER LEASE
BY BONDED ENTITY

NOTE: **All** bonding requirements on Indian leases are handled by the Bureau of Indian Affairs and are **not** covered in this User Guide.

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B. Bond Guarantees

Keywords

A bond is a financial guarantee, proffered to provide assurance to one party that another party will fulfill an obligation it has undertaken to perform. Up to a specified amount or limit, a bond may guarantee faithful performance, financial strength, and the ability or capacity to perform. Bonds are **not** insurance. Insurance pays, on behalf of the insured, the amount of losses sustained in accordance with the amount of coverage purchased. Under a bond, the principal (or obligor on a personal bond) is responsible to fulfill a contractual obligation. If the principal/obligor does not perform, the bond may be collected.

BONDS NOT INSURANCE

An insurance policy is between two parties, the insurance company and the insured, and either party may cancel the contract unilaterally. A bond may be between two parties, as in the case of a personal bond where the contract is directly between the obligor and the obligee. A surety bond, written for the benefit of a third party, is often obtained, and is a three-way contract among the principal (owner of the bond), the surety (insurance company), and the obligee (the party to whom performance is promised). A bond may only be terminated or cancelled with the consent of **all** parties to that bond, i.e., the consent of the principal, surety, and obligee on a surety bond, or the consent of the principal/obligor and the obligee on a personal bond.

PARTIES TO BONDS

On BLM oil and gas bonds for activities on Federal lands, the principal/obligor is the owner of the bond, or the one for whom the bond is filed; the surety, if it is a surety bond, is the insurance company guaranteeing the principal's performance; and the obligee is the BLM.

DEFINITION OF BOND PARTIES

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C. Types of Bonds

BOND TYPES

There are two types of bonds: personal and surety.

1. Corporate Surety Bonds. A surety bond consists of a promise by a principal and surety to the United States that the surety will correct any default when the principal fails to do so, paying up to the limits of the amount of the bond. The acceptance of the surety bond by the BLM on behalf of the United States, and BLM authorization of activity based upon the bond, completes the cycle and makes the bond a three-way contract between the principal, surety, and the United States. This three-way contract can be enforced if the principal fails to comply with the terms and conditions of the lease, including well abandonment and all surface reclamation (including revegetation) costs and all royalties (including compensatory royalty assessments) or back rentals owed the United States Government. Money paid by a principal to obtain a surety's entry into the arrangement is normally called the premium and is solely a private matter between the principal and the surety. Surety bonds must be issued by qualified surety/insurance companies approved by the Department of the Treasury as indicated in the ALMRS Automated Bond and Surety System (ABSS).

SURETY BOND

2. Personal Bonds. The principal (obligor) may furnish a personal bond in lieu of a surety bond to ensure compliance with all the terms and conditions of an oil and gas lease or for geophysical exploration activity on unleased lands. A personal bond must be accompanied by a deposit of either a letter of credit (LOC), certificate of deposit (CD), cashier's check, certified check, or negotiable Federal Treasury securities, e.g., U.S. Treasury bills, bonds, or notes, in a full current market value equal to the bond amount required by the Federal oil and gas regulations.

PERSONAL BOND

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Effective June 17, 1988, the regulations at 43 CFR 3104.1(c) were revised to allow the acceptance of LOC's and CD's. The principal/obligor collects interest on CD's and negotiable Federal Treasury securities. All personal bonds must be accompanied by a properly completed copy of the current BLM-approved bond form (see Illustrations 1 and 2), that includes a power of attorney giving the Secretary of the Interior the authority to collect the proceeds in case of any default. A "cash" bond in the form of a cashier's check or certified check is acceptable. However, cash is **not** an acceptable form of remittance for a personal bond. The submission of U.S. Savings Bonds and notes or bonds issued by either a State or local government or a private company also are **not** acceptable forms of security for personal bonds for Federal oil and gas leasing or exploration activities.

UNACCEPTABLE BOND
SECURITIES

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D. Minimum Bond AmountsKeywords

There are three minimum bond amounts covering oil and gas lease activities currently: a \$10,000 individual lease bond covers a single Federal lease; a \$25,000 statewide bond covers all Federal lease operations of the principal in one geographic State; and a \$150,000 nationwide bond covers all Federal lease operations in all States, except the National Petroleum Reserve in Alaska (NPR-A) unless a rider is provided to cover NPR-A lease operations.

BOND AMOUNT -
FEDERAL LEASE
ACTIVITIES

The minimum amounts for oil and gas geophysical exploration bonds are currently: \$5,000 for a single exploration location (the bond is filed with the Field Office Fluid Mineral Operations); \$25,000 for statewide exploration activities; and \$50,000 for nationwide exploration activities.

BOND AMOUNT -
EXPLORATION
ACTIVITIES

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E. Parties Who Can Furnish Bonds

Bond coverage may be furnished by any of the following:

1. The operator on the ground;
2. A lessee;
3. A holder of operating rights (sublessee);
4. A unit operator.

NOTE: In many instances, bonds have been allowed to be filed in the name of an individual in the capacity of "dba" (doing business as). A principal shown on a bond with a "dba" name is likely indicative of an individual that may be a sole proprietorship. Since a sole proprietorship is **not** authorized to hold Federal mineral leases under the qualifications provisions of the Mineral Leasing Act (MLA) of 1920 (30 U.S.C. 181), using only the "dba" name to hold a lease or for lease bond coverage is **not** acceptable. A lease must either be held in the individual's name only, or in the individual's name **and** the "dba" name. (See Handbook 3102-1. See also Tom Milner, 45 IBLA 119 (1980), McClain Hall and Arthur R. Frank, 61 IBLA 202 (1982), and J.F.C Oil & Gas, 60 IBLA 191 (1981).) The IBLA has held that a "dba" after an individual's name should be treated as surplus. Thus, a "dba" could be shown on a bond, but the leases to be covered under such a bond may only be held in the name of the individual to meet the intent of the law and regulations, and the bond itself also must include the name of the individual. If an operator (not holding any lease interests) holds a bond in an individual's name **and** a "dba," nothing in the law or regulations prevents the operator from using the "dba" name only, e.g., on an APD. However, the operator is to be encouraged to use his/her individual name in addition to the "dba" (the same as is shown on the bond). Black's Law Dictionary defines sole proprietorship as a form of business, usually unincorporated, in which one person owns all the assets of the business, in contrast to a partnership and corporation. The sole proprietor is singly liable for all debts of the business.

Keywords

PARTIES WHO
MAY FURNISH
BONDING

DOING BUSINESS AS
("DBA")/SOLE
PROPRIETORSHIP

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F. Bond FormsKeywords

Effective October 1, 1988, in accordance with a notice published in the Federal Register on July 20, 1988, prior editions of the BLM-approved bond forms (pre-June 1988 forms) shall no longer be accepted. Only bonds filed on the current June 1988 or later BLM-approved edition of bond Form 3000-4, Oil and Gas or Geothermal Lease Bond (see Illustration 1), and Form 3000-4a, Oil and Gas or Geothermal Exploration Bond (see Illustration 2), are acceptable. A new bond filed on a BLM-approved form not currently in use would be unacceptable unless the bond form had not been declared obsolete by the BLM prior to the filing of such bond (e.g., as implemented on October 1, 1988, for the current bond forms). However, bonds submitted prior to October 1, 1988, on previous bond forms that have been accepted by the BLM and that are currently still in force and effect, continue to be valid and do not require resubmission on the current revised June 1988 edition of the bond form.

ACCEPTABLE
BOND FORMS

Only a single copy of the bond form is required to be filed with the BLM. When requested, provide information concerning the BLM oil and gas bonding requirements (see Illustration 3).

The June 1988 and June 1987 editions of Form 3000-4 (see Illustration 1 and Appendix 1, respectively) contain language that provides coverage whether the principal has either an interest in a lease and/or is conducting operations on a lease. If the operator holds no interest in the lease on which operations are proposed and is using any of the previous editions of the BLM-approved statewide and nationwide bond forms (see Appendices 2 through 7) to cover the proposed lease operations, a rider to such a previous bond form edition is required to allow the use of that bond by the operator (see Illustration 4). Previously, a separate bond for a lease operator also was allowed (see Appendices 8 through 11 for the previous editions of the BLM-approved operator bond forms).

OPERATOR
PROVIDING BOND

If an entity other than the lessee of record as principal of the bond (or holder of operating rights as principal) is going to operate on the lease, a consent of surety must be furnished by the principal to allow the operator to be covered under the bond (see Illustration 5), or the operator must furnish its own bond coverage.

LESSEE PROVIDING
BOND - CONSENT
OF SURETY FOR
COVERAGE OF
OPERATOR

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Keywords

A designation of operator from either the lessee holding record title interest or the holder of operating rights is not currently required by the BLM. The operator, through submission of an APD, Sundry Notice, or the monthly Report of Operations, accepts responsibility under the terms and conditions of the lease for operations conducted on the lease or portion of the lease. A person or entity also may meet the requirements to accept responsibility by submitting a statement, as follows, signed by an authorized person and dated:

DESIGNATION OF
OPERATOR NOT
REQUIRED

The undersigned accepts all applicable terms, conditions, stipulations, and restrictions concerning operations conducted on the leased land or portion thereof, as described below:

STATEMENT OF
RESPONSIBILITY

Lease No.

Bond Coverage: (Indicate
if individually bonded
or under another's bond)

Legal Description of Land:

Formation(s) (if applicable):
BLM Bond File No.:

Date:

Authorized Signature:
Title:

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KeywordsG. Terminating Period of Liability

Once a bond has been accepted by the BLM, its period of liability can be terminated only pursuant to its own terms. The bond itself is **not** cancelled or terminated. The United States, acting through the BLM, cannot terminate the period of liability of a bond until all obligations of the lease terms have been fulfilled or until a satisfactory replacement bond (or bonds) has been accepted by the BLM. The BLM terminates the "period of liability" of the bond, i.e., it indicates a specific date, after which no new liability may accrue under the bond. This does not mean that the surety may deny liability for a cause of action accruing **before** termination of the period of liability. Termination of the period of liability means only that the exact date has been set beyond which no **new** cause of action may accrue. The BLM does not unconditionally release the surety from all past, present, or future liability. (See Sections XIV, XV, XVI, and XVII, below. See also Section XIX, Statute of Limitations, below, and the Regional Solicitor's Memorandum (No. BLM ER.0659) dated October 26, 1989, "Federal Oil and Gas Lease Bonding--Period of Liability" (Appendix 18).)

BOND TERMINATION

H. Related Bond References

This User Guide is to be used in conjunction with references to oil and gas bonds found in 43 CFR 3104, 3106, 3154, 3160, and 3180, as well as in Handbook 3106-1.

RELATED BOND
REFERENCES