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Subject

H – 3809-2 Surface Management Bond Processing Handbook (Public)

1. Explanation of Materials Transmitted: This release transmits the Handbook for Surface Management Bond Processing.
2. Reports Required: None
3. Materials Superseded: Manual pages superseded by this release are listed under “REMOVE” below. No directives are superseded.
4. Filing Instructions: File as directed below

REMOVE

INSERT

None

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Introduction and Caveats for this Handbook.

1. For the purposes of this handbook, for brevity and to avoid confusion, the office for 3809 bond adjudication is the state office (SO) and the office for 3809 operations is the field office (FO). Use this guidance to adjudicate and maintain surface management bonds in conjunction with the 3809 surface management regulations, the 3809 surface management manual and handbook, any manual supplements developed by specific Bureau of Land Management (BLM) states, and any memoranda of understanding or other cooperative agreements existing between your office and agencies in your state.
2. This handbook refers to the adjudication, acceptance/rejection, and maintenance of the 3809 bonds and associated financial instruments being accomplished by the BLM SO. 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 includes the types of financial pledges required to secure a personal bond. For BLM’s purposes, mining operations require one of two types of bonds: a surety bond, where the surety company insures performance by the operator of its obligations to BLM, or a personal bond, which must be secured with a financial pledge of one of the remaining types of financial guarantees (b-f above). In this handbook, the term “bond” will be 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.
3. This handbook provides some guidance for the entry of the 3809 bonds into the Legacy Rehost 2000 (LR2000) Bond and Surety System (BSS) and the LR2000 Case Recordation System (CRS). Also, please refer to appropriate data standards and/or dictionaries. If your state utilizes another system to accomplish the automated data entry, please follow the guidance issued by your state for an alternative automated system and the appropriate data entry responsibilities for that system.
4. All plans of operations and notices require the operator to include how the surface disturbed by the operations will be reclaimed (reclamation plan). Sometimes, especially in the case of abandoned or non-operational plans/notices, there may only be a reclamation plan established because reclamation is all that is to be done on the lands. In this case, a bond may or may not be required depending on the state or office having jurisdiction over the site being reclaimed.

References in this handbook to “plan” should be interpreted as the “Plan of Operations” and not a stand-alone reclamation plan.

5. A decision issued by a SO is on behalf of the State Director. Therefore, a decision issued by a SO is not subject to the State Director review provisions of 43 CFR 3809. An office, for example, the district office, cannot formally review its own decisions. Decisions issued by the BLM district or field offices are subject to and can be formally reviewed by the SO. State office decisions are only appealable to Interior Board of Land Appeals or to federal court.

Therefore, the review/appeal process is different and the appeals statements will be different on a decision issued by a SO versus a decision issued by a field or district office under the regulations at 43 CFR 3809.

6. Suretyship law and related concepts used to adjudicate bonds apply to all bonds regardless of the BLM program. Differences occur in the authorities that give the BLM the right to require a financial guarantee (a bond), the authorizations (regulations) that provide guidance as to how the BLM will carry out the bonding actions, the amounts that may be required for a bond, and the various financial instruments that may be pledged to secure a bond. The basic differences have been captured in a chart in Appendix A.

CHAPTER I – Overview of Bonding**KEYWORDS**

What is a bond? A bond is a written contract, guaranteeing performance and/or payment, and is usually secured with some type of financial pledge. If the person with the obligation to perform fails to do so, the bond guarantees payment for financial loss caused by the act or the default of a person. In the BLM, a bond is a binding contract between the BLM and an operator, or on behalf of an operator, secured by money or financial assets, that insures the fulfillment of obligations.

A. Why and When is Bond Coverage Required?

Bonds protect the government, and taxpayers, against financial damages or loss arising from defaulted or terminated contracts, leases, permits, special-use authorizations, and licenses. The BLM requires bonds prior to surface disturbance in mining and mineral exploration, development, and production, rights-of-way authorizations, procurement and construction contracts, and special-use permits for different purposes. The BLM requires bonds in different resource programs such as oil and gas, timber, coal, geothermal, mineral materials, rights-of-way and others. The various programs differ in bond instruments, bond amounts, and other requirements. This handbook only addresses bond coverage required prior to any development involving surface disturbance related to operations conducted under the Mining Law of 1872 and the regulations at 43 CFR 3802 or 3809, i.e., prior to any surface-disturbing activities under Notice-level operations or a Plan of Operations (operations).

**BOND
COVERAGE
REQUIREMENTS**

Bonds required for surface management (43 CFR 3802/3809) guarantee the lands disturbed during mining operations will be reclaimed including repair of damaged surface, removal of buildings and equipment, disposal of waste, and revegetation of the disturbed lands. Bond coverage must be continued in full force and effect until all the terms and conditions of the operations have been met. This includes timely completion of the terms and conditions of the operating and reclamation plan, reclamation of the operating area, to the satisfaction of the Authorized Officer (AO).

When a proposed change of operator comes to the attention of the FO staff, the FO must determine the new operator is properly bonded under the current regulations before officially recognizing the new operator.

**CHANGE OF
OPERATOR**

A surface management (3809) bond extends coverage to a right-of-way **only if** a right-of-way is part of the approved operating

**BONDS COVER
RIGHTS-OF-**

plan and not a separate BLM authorization under 43 CFR 2800 (which would require a separate bond under the 2800 regulations).

WAY

The lands to be disturbed and/or developed under the operations may be a combination of federal and private surface. A separate bond is not required for the protection of a private surface owner since that protection is already provided by the federal surface management bond.

**LANDS MAY
BE BOTH
FEDERAL AND
PRIVATE
SURFACE**

B. Bond Contracts

A bond is a written contractual promise given to provide assurance to one party (BLM) that another party (operator) will fulfill an obligation it has undertaken to perform. Up to a specified amount or limit, a bond may guarantee credibility, faithful performance, financial strength, and the ability or capacity to perform a duty. A financial guarantee is a guarantee of payment if the obligor (operator) fails to perform.

**BONDS ARE
CONTRACTS**

A performance bond protects the bond owner, the BLM, from financial loss should the contractor (operator) fail to perform the contract (Notice/Plan) in accordance with its terms and conditions. Under a bond, the principal/obligor is responsible to fulfill a contractual obligation. If the principal/obligor does not perform, the bond may be collected.

Insurance, when used as a financial guarantee, must be comparable to the other types of acceptable financial guarantees. Normally, insurance pays the insured, or on behalf of the insured, the amount of losses sustained under certain circumstances, and the amount paid out is in accordance with the amount of coverage purchased. If insurance is acceptable for bonding purposes, it must be the BLM that can file a claim and is paid, and there must be sufficient coverage in place. Additionally, the protections for the BLM must be comparable to the other types of financial guarantees.

**INSURANCE
REQUIREMENTS**

A bond is a contract between two or more parties, to guarantee the performance of a specified condition(s). Personal bonds are contracts directly between the obligor (usually the operator) and the obligee (BLM). A surety bond is written for the benefit of a third party, and is a three-way contract among the principal (owner of the bond, in this case, usually the operator), the surety (surety company), and the obligee (the party to whom performance is promised, in this case, BLM). A bond may only be terminated or canceled with the consent of all parties to the bond, i.e., consent of the obligor and the obligee on a personal bond, or the consent of the principal, surety, and obligee on a surety bond. Usually, an insurance policy is between two parties,

**PARTIES TO A
BOND**

the insurance company and the insured, and either party may cancel the contract unilaterally. However, if an insurance policy is to be used for bonding purposes, the BLM must be a party to the policy and the policy cannot be unilaterally cancelled.

On BLM surface management bonds, the operator is the principal/obligor who supplies the bond, or is the one for whom the bond is obtained; the surety, if it is a surety bond, is the surety company guaranteeing the principal's performance; and the obligee is the BLM.

C. Bond Coverage

A bond submitted to the BLM is for individual, statewide, or nationwide coverage. The amount provided under any of the three types of coverage must always be sufficient to cover all reclamation costs for the operations covered by the bond. The operator must be the principal or a co-principal on the bond **or** the bond must be submitted by a third party and include a properly executed consent of surety, showing the bond is provided for the operator as named in the Notice/Plan of Operations on file with the BLM.

An individual bond covers all operations of the principal (operator) for a specific plan. If the operator wishes to assign the Plan of Operations to another party, a consent of surety must be furnished to allow the new operator to be covered under the existing bond or the new operator must furnish its own bond.

The surface management regulations at 43 CFR 3802 and 3809 provide for statewide and nationwide bonds. These bonds can be accepted to cover all of a principal's operations in one state (statewide bond) or in all states on lands open to the operation of the Mining Law (nationwide bond). The BLM's regulations require the BLM to review the required bond amounts periodically to ensure the amount is adequate for an operator's total reclamation liability within a state (for a statewide bond) or nationally (for a nationwide bond).

Nationwide bonds must be entered promptly into the BLM Bond and Surety System (BSS) (subsystem in Legacy Rehost System 2000 (LR2000)), i.e., within 5 working days of the action involved (e.g., bond filed by an entity, bond accepted, etc.). Failure to enter a nationwide bond timely may cause the delay of approval of various actions in other BLM SOs. Likewise, obligations against a nationwide bond must be promptly reflected in the bond system to prevent unfunded liability authorizations.

DEFINITION OF BLM BOND PARTIES

BOND COVERAGE

CONSENT OF SURETY

STATEWIDE AND NATIONWIDE BONDS

PROMPT ENTRY OF NATIONWIDE BONDS TO BOND AND SURETY SYSTEM

D. Types of Bonds

There are two types of bonds - surety and personal.

1. 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 should the principal not do so, either by ensuring performance is completed or paying up to the penal sum (amount) of the bond. The acceptance of the surety bond by the BLM on behalf of the United States, and authorization of activity based upon the bond, completes the cycle and is a three-way contract between the principal, the surety, and the United States. This three-way contract is enforced against the principal and/or the surety should the principal fail to comply with the terms and conditions of the operations and all surface reclamation requirements. Money paid by a principal to obtain a surety's entry into the arrangement is called a premium and is a private matter solely between the principal and the surety. The surety also may require collateral or an indemnity agreement from the principal, which is also a private matter not involving the BLM. See Chapter III of this handbook for information about adjudicating surety bonds.
2. Personal Bonds. Alternatively, the principal (obligor) may furnish a personal bond to ensure compliance with all the terms and conditions of a Notice or Plan of Operations on public lands. A personal bond **must be accompanied** by a financial instrument pledged to the BLM as security for the bond. Financial instruments that may be pledged to secure a personal bond include a deposit with the BLM of an irrevocable letter of credit (LC), a negotiable U.S. Treasury security (i.e., U.S. Treasury bill, bond, or note), guaranteed remittance (e.g., cashier's check, certified check, cash), a fixed time deposit account (e.g., a certificate of deposit (CD) or a savings account (SA) or an assignment of such fixed time deposit account), or another financial guarantee as described at 43 CFR 3809. See Chapter IV of this handbook for information about adjudicating a personal bond and the financial instruments that may be pledged as security for a personal bond.

SURETY BONDS

PERSONAL BONDS

Bonds secured by a fixed time deposit account or U.S. Treasury securities must have a full current market value equal to the bond amount required by the BLM AO. The market value must include any amount that would be collected by the financial institution in the event of early redemption, withdrawal, or collection. Also note, the

CURRENT MARKET VALUE REQUIRED FOR BOND PLEDGE

principal collects the interest on any interest-bearing account absent operator default.

In October 1986, Section 303 of the Federal Land Policy Management Act (FLPMA) was amended to allow irrevocable LCs, third-party sureties, and bonds held by a state authority to secure a bond for surface management operations (see 100 Stat 1783-243 [October 18, 1986] and 100 Stat 3341-243 [October 30, 1986]).

**AUTHORITY
AND
AUTHORIZATION
FOR FINANCIAL
INSTRUMENTS**

E. Setting the Required Bond Amount and Processing the Bonds

The BLM operations personnel in the FO (in consultation with state or other agencies also having some jurisdiction over the same lands as covered by the Federal Notice or Plan of Operations) are responsible for determining the amount of the reclamation bond required for the operations based on the estimated reclamation costs submitted by the operator. Once operations personnel have established the required bond amount for a specific Notice or Plan of Operations, the operator will apply to the SO bond staff/adjudication section for adjudication and acceptance of the bond contract and financial instrument. The designated office will receive, adjudicate, accept/reject, hold, maintain, demand collection of the bond, or authorize release of associated funds and terminate the bond period of liability.

**SETTING THE
REQUIRED
BOND AMOUNT
AND
PROCESSING
THE BOND OR
BOND AND
FINANCIAL
INSTRUMENT**

All bonds (bond contract and financial instrument) must be submitted to the designated BLM Office and must be executed on the most current bureau-wide forms. The bond contracts contain the terms and conditions of responsibilities under the bond, such as under what conditions the BLM will accept cancellation Notices. In addition, the personal bond also contains a power of attorney to the Secretary of the Interior, which has been further delegated to the BLM, which gives the Secretary control of the funds including the authority to collect the proceeds in case of any default.

Most individuals, companies, and sureties will file bond documents with the correctly designated BLM Office. However, if the incorrect office receives a bond and/or related documents, the bond and/or documents must be forwarded expeditiously to the correct office and personnel for adjudication.

F. General Information about Reclamation Requirements

Aspects of mining operations which are required to be covered by a bond may be found at 43 CFR 3809 and associated reclamation manuals/handbooks, e.g. H-3809-1, and in agreements which may be applicable among the BLM, U.S. Forest Service, state agencies and/or

**GENERAL
RECLAMATION
INFORMATION**

local governments.

1. Reclamation contracts are considered Federal construction contracts. See Bureau Handbook H-1510-3, *Contracting for Construction*, for further details.
2. Reclamation estimates include cost of contract administration.

G. Change of Operator

When a change of operator comes to the attention of the BLM, the FO AO must not release any part of the bond or issue any decision or notice relieving the current operator of responsibility for reclamation until the transferee (1) provides documentation in writing that it accepts responsibility for the current operator's previously accrued obligations; and (2) provides an adequate replacement bond to cover both the current operator's obligations and any new disturbance that will be caused by the transferee.

CHANGE OF OPERATOR

A designation of operator from either the mining claimant or the operator is not currently required by the BLM. The operator, through submission of a Notice or Plan of Operations, accepts responsibility under the terms and conditions of the Notice or approved operating plan, for the surface disturbance conducted on public lands. The bond guarantees performance of the responsibilities.

DESIGNATION OF OPERATOR NOT REQUIRED

H. Parties Which May Furnish Bond Coverage

Bond coverage must be furnished by either of the following parties:

1. The operator **as named in the Notice or the Plan of Operations** filed with the BLM; or
2. A third party **on behalf of** the named operator. If a party other than the operator furnishes the bond, consent of surety must be also submitted showing the bond principal is posting the bond on behalf of the operator.

PARTIES WHICH MAY FURNISH BOND COVERAGE

If a party, other than the bond principal, provides just the financial pledge for the bond, a rider to the bond is required committing the funds for the bond.

NOTE: The IBLA has held that a "dba" after an entity's name is to be treated as surplusage. The BSS must contain the name of the business entity or the business entity *and* the "dba." See *Tom Milner*, 45 IBLA 119 (1980), *McClain Hall and Arthur R. Frank*, 61 IBLA 202 (1982) and *J.F.C. Oil and Gas*, 60 IBLA 191 (1981). The Board's holdings

"DBA" ENTITIES NOT ALLOWED

suggest, if abbreviating the name is a must, the named registrant of the fictitious business be used rather than the entity doing business under the fictitious name filing. However, the BLM Washington Office and standard business practices require the use of the complete name of an entity. A “dba” entity is not recognized by most states as a legal business entity.

I. Bond Information

When requested, provide the bond forms and information on acceptable financial instruments by referring requestor to an appropriate website administered by the various BLM offices or by faxing or mailing bonding information and bond forms to the requestor (Illustration 1-1). The BLM public rooms/information access centers/etc. (depending on the individual BLM state’s organization and internal procedures) of each BLM office should have the bond forms, bond information, examples, and a list of frequently asked questions available for customers.

BOND INFORMATION

The bonds and financial instruments are abstracted in the BSS of the BLM’s LR2000 system. The BSS provides bureau-wide information as to the financial responsibility for reclamation on public lands and must be kept current at all times.

BOND AND SURETY SYSTEM

All bonds providing coverage of public, BLM-administered lands must be entered by the BLM in BSS regardless of whether the BLM, a state, or other agency accepted, holds or maintains the bond. The BLM must be able to show the financial responsibility for disturbance to the public lands.

J. Terminating the Period of Liability under the Bond

The **period of liability** of a bond begins at the time a satisfactory bond is accepted by the BLM for a specified obligation and continues until those obligations covered by the bond come to an end as specified in the terms of the bond. The period of liability ends, although the bond itself is not terminated or canceled. The United States, acting through the BLM, cannot terminate the period of liability under a bond until all obligations of the terms of a Plan of Operations or a Notice-level disturbance have been fulfilled, or payment of the bond (penal sum) is received by the BLM, or until a satisfactory replacement bond has been accepted by the BLM.

TERMINATION OF THE PERIOD OF LIABILITY

When the BLM surface management specialists determine, to the extent they are able, that all obligations under the bond (the requirements of **all** operations) have been met, the period of liability under the bond may be terminated by the SO bond staff or adjudication. That means an exact date is set after which no **new** liability may accrue under the bond. This

does not mean that the bond principal may deny liability for a cause of action accruing before the termination of the period of liability of the bond.

Until the current regulations became effective January 20, 2001, the BLM **did not** release a surety from past liability. However, the current regulations at 43 CFR 3809.581(b) state that the surety is released from an obligation that accrued while the surety bond was in effect when a replacement bond covers such obligations to the BLM's satisfaction. The same standard does not apply to the bond principal or to the operator or to parties under a personal bond.

**THE SURETY
MAY BE
RELEASED
ONLY UPON
SATISFACTORY
REPLACEMENT
OF THE BOND**

K. Retention of Bonding Instruments

Once a document is received by the BLM, it becomes part of the BLM's official case file, and as such, cannot be returned, destroyed, or permanently removed from the official case file. The original bond contract and any bond riders are to be retained as part of the official case file.

**BOND
BECOMES
PERMANENT
PART OF THE
RECORD**

Financial pledges securing a personal bond are returned to the financial institution, unless the obligor requests return to the obligor, with a copy kept in the bond file. Because official case files may contain some information which may be considered protected under the Privacy Act or exempt under the Freedom of Information Act (FOIA), it is important to review each file for any information before it is provided to a requestor. This includes automated data contained in the BLM BSS.

Upon a reasonable time after the closing of a bond file, the bond documents and pertinent correspondence should be combined with the Notice or Plan of Operations file, if bonds and operating files are maintained by separate offices or in separate files. Any bond documents that contain confidential information must be segregated in the surface management case file with Form 1273-2. Form 1273-2 provides that, "[The form] must be attached to the record at all times when the record is removed from the files." Some information associated with the bonds and financial instruments is privacy information protected under Title III of the Privacy Act and must be redacted or otherwise removed prior to viewing by the public or unauthorized BLM personnel. If you are unsure whether any information in a bond is protected information, contact the Solicitor's Office.

**RETENTION OF
BONDS AND
RELATED
DOCUMENTS**

See also BLM Manual 1278 for additional guidance on access to BLM information. Disposal of the surface management case file is to be made according to Bureau Manual 1220, Records Retention Schedule.

Current requirement is 50-years retention after cutoff. Cutoff is the end of the fiscal year in which the operations are completed and reclamation

is accepted.

L. Related References

This Handbook Section is to be used in conjunction with the BSS User Guide, FLPMA and amendments, 43 CFR 3802 and 3809 as well as Bureau Manual Sections 3809 and applicable handbooks. A copy of 31 CFR (U. S. Treasury regulations), the Federal Acquisition Regulations, and the General Services Administration regulations concerning bonds taken and contracts issued by the Federal government are also recommended.

CHAPTER II – General Principles and Initial Bond Processing

A. Determination of Reclamation Costs

The BLM FO or other delegated AO issues a written determination of the named operator's reclamation cost estimate (RCE) and required bond amount for existing and/or proposed disturbance on the specified operations. Guidance for reviewing proposed operations, determining the reclamation cost estimate, and setting the required bond amount may be found in the Surface Management Handbook, H-3809-1.

Bonds may be accepted before a Notice or Plan is filed with the BLM. When the AO determines the cost of reclamation for a Notice or Plan, that amount is then obligated against the bond already accepted. Having the bond in place before the Notice or Plan is filed is often more efficient for the BLM and operator. Operations are authorized after the bond(s) is committed (obligated) by the BLM SO in the amount set as required by the BLM FO.

B. Bond Forms

In May 2012 (previously 2007), the Washington Office authorized bond forms to be used for surface management bonding under 43 CFR 3802 or 3809. Only the original approved bond form may be submitted as a reclamation bond to the BLM. Only a single original of the bond form is required to be filed with the BLM. The bureau-wide forms are to be used until revised versions are issued by the Washington Office. The forms are as follows:

Form 3809-1, Surface Management Surety Bond. This is the bond contract to be used for surety bonds that are underwritten by a corporate surety certified by the U.S. Department of the Treasury. Surety bonds must be accompanied by the surety's power of attorney.

Form 3809-2, Surface Management Personal Bond. This is the bond contract to be used for financial pledges to secure a bond for the BLM. The signatory on personal bonds must be acknowledged by a notary and be accompanied by a corresponding financial guarantee (the bond and financial pledge may or may not be received at the same time).

Bonds accepted on previous editions of 3809 surety and personal bond forms may provide coverage only for Plans of Operations; therefore, discontinue use of these forms. Bonds accepted before the regulations became effective on January 20, 2001, do not apply to Notice-level operations. Bonding is now required for reclamation activities of Notice-level operations. In order for a Notice-level operation to be covered under an existing older bond form, the bond principal must

KEYWORDS

**DETERMINATION
OF
RECLAMATION
COSTS**

**WHEN BOND
MAY
BE ACCEPTED**

**BUREAUWIDE
BOND FORMS**

**FORM 3809-1
SURETY BOND**

**FORM 3809-2
PERSONAL
BOND**

**BOND
COVERAGE FOR
PLANS AND
NOTICES**

submit a rider extending the bond coverage to Notices, or a new bond which covers Plans and Notices may be submitted as a replacement for the older bond.

Form 3809-4, Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal (Consent of Surety) Rider. This rider is to be used with a personal or surety bond when the bond is provided by a party other than the operator, i.e., when the bond principal is NOT the operator. The principal on a bond must be the operator, as named in the Plan of Operations or the Notice filed with the BLM, or the bond must be pledged on behalf of the operator, by a third party. The operator must always be bonded to guarantee reclamation of surface-disturbing activities.

**FORM 3809-4
CONSENT OF
SURETY**

Third-party surety and personal bonds are acceptable if, in addition to the bond, the consent of surety (Form 3809-4) is included, whereby the bond is pledged on behalf of the named operator. The principal, and surety if a surety bond, agree the bond covers the operator and 100 percent of the reclamation liabilities for the Plan of Operations or Notice and the associated obligations under the bond.

Form 3809-4a, Surface Management Personal Bond Rider. This rider is used with a personal bond to change the amount of the bond, extend the coverage, add co-principals, document that the financial pledge is supplied by a party other than the bond principal, etc.

**PERSONAL
BOND RIDER**

Surety Bond Rider. There is actually no BLM form for a surety bond rider because a surety company generally uses a “General Purpose Rider” (standard surety industry form) to amend a surety bond. This is acceptable to the BLM as long as the rider contains the information and language to adequately amend the bond as required.

**SURETY BOND
RIDER**

Form 3809-5, Notification of Change of Operator and Assumption of Past Liability is to be used when the operations are transferred to a successive operator. Do not use this form for a name change or a corporate merger.

**CHANGE OF
OPERATOR**

C. Co-Principals

If the bond contains more than one principal, each co-principal is required to sign the bond **regardless** of the business relationship. It may be that one person has the authority to sign for all the co-principals, and if that is the case, all entity and/or company names should be clearly identified on the bond or rider with **a signature for each** entity or company.

**CO-PRINCIPALS
TO THE BOND**

D. Entities Operating Under “Doing Business As” (dba)**DBA ENTITIES**

The parties on either side of the dba equation should be treated as a single entity and must be directly on a bond as the bond principal or covered by the bond through an attached rider. Using a dba in some states creates two legal entities that are separate; however, in most states they are considered one entity. Most states do not recognize a dba as a legal business organization, and the filing is merely recorded in a county recorder’s office.

For the BLM, a bond must be in the name of the registrant of the fictitious business name **and** the dba to be acceptable.

E. Multiple Bonds Covering a Single Mining Operation**MULTIPLE BONDS**

More than one bond may be accepted to provide reclamation coverage on an individual, statewide, or nationwide basis. In the event of multiple bond coverage, even though one bond may be specifically referred to in the Notice or Plan, the BLM would not be precluded from collecting on any other bonds covering the operations area should there be a default of any terms or conditions of the Plan/Notice. Each bond in a multiple-bond situation provides coverage for a Plan/Notice as a whole. That is, a bond cannot be accepted for only part of the operations or for a specified time or operational event. If partial collection is necessary where multiple bonds exist from different parties, an initial effort should be made to proportionally collect from each of the bonds rather than 100 percent of the amount of default from a single bond.

Multiple financial instruments of the same type (letter of credit/letter of credit) may be accepted for a single bond as long as the penal sum of the bond is adjusted by a bond rider each time additional monies are received or returned. Any and all of the financial instruments may be collected in the event of default. If the instruments are from the same party, the BLM should contact the remitter to determine the priority for returning the financial instruments. A separate bond form is required for each different type of financial instrument.

MULTIPLE FINANCIAL INSTRUMENTS**F. Establish the Bond File**

The SO establishes a bond file that is separate from the operations case file. Each bond file will contain a copy of the determination of the reclamation cost estimate and required bond amount, the bond and any riders, a copy of the financial instrument, correspondence pertaining to

ESTABLISH THE BOND FILE

the bond requirement and the bond, and an updated LR2000 serial register page and bond abstract. The financial instruments (letters of credit and time deposits) pledged to secure a personal bond must be kept in a locked, fireproof safe or vault, on the BLM premises or offsite, with limited access by BLM personnel.

NOTE: The public and unauthorized BLM personnel should have very limited access to bonds or file copies of bonds and/or the financial instruments. The public may only have access to bond information through a Freedom of Information Act (FOIA) request. The bond case files may be examined, but examination must be under careful scrutiny and **constant supervision** by the BLM office maintaining the bond files. Any Class III privacy information in the bond file (social security numbers, names of account holders, bank account numbers, account balances, etc.) must be redacted from the bond file copies and bond abstracts prior to authorized viewing.

ACCESS TO THE BOND FILE

According to BLM Manual 1278, External Access to BLM Information, “[P]ublic files may contain some information concerning ongoing negotiations, financial information, business information, personal and privacy information, investigations, internal memoranda, drafts and working documents, proprietary, geological and geophysical information relating to wells, or other sensitive information. The above information, if it exists, shall be segregated within the file. This information should be removed from the file before providing access to the public and requests for this type of information must be made under the FOIA because an exemption would apply.”

Many BLM offices require written permission be obtained from the bonded principal prior to the bonds or the financial instruments being examined by a party other than the bonded principal or the party which provided the financial instrument. In addition, access to the bond files and bond documents may be limited to designated BLM personnel. Determine your state’s policy before allowing the bonds, bond case files, or BSS abstracts to be viewed by any party other than the bonded principal. **Always redact the privacy information.**

G. Establish the Automated Bond Record

Follow the LR2000 BSS user guide instructions to apply actions codes from Data Element 2960. Use the Master Name System to obtain the Name Identification (NID) for the bond principal, co-principals, operator, surety, financial institution, the agency accepting the bond for public lands, and other appropriate parties. If a NID does not exist, request a NID from the National Operations Center (NOC) in Denver. A computer-generated BLM bond number will be assigned to **each bond** when the data is entered and saved. Include the BLM bond number in

ESTABLISH THE AUTOMATED BOND RECORD

all correspondence relating to the bond.

LR2000 guidance should be followed for case recordation regardless of the position(s) designated to enter data/update case recordation with either information pertaining to the 3809 bonds filed or actions taken by Adjudication.

H. Bonds Accepted and Held by Agencies Other Than the BLM

In October 1986, Section 303 of FLPMA was amended to allow the acceptance of irrevocable letters of credit, third-party sureties, and bonds held by a state authority for surface management operations (100 Stat 1783-243 [October 18, 1986] and 100 Stat 3341-243 [October 30, 1986]).

In-lieu bonds, bonds accepted and held by a state agency, must be entered and tracked in the BLM bond system by the BLM SO. This process allows the BLM to validate satisfactory financial responsibility for the reclamation of exploration and mining operations on public lands.

IN-LIEU BONDS

State-approved financial guarantees are addressed in the regulations at 43 CFR 3809.570 through 3809.574. The BLM adjudication of state-approved financial guarantees is determined by cooperative agreements or memoranda of understanding between the individual state agency approving such a financial instrument and the BLM office administering the affected public lands. The kinds of individual financial guarantees that may be approved by a state and acceptable to the BLM are listed in the regulations at 43 CFR 3809.555.

I. Operator Covered by Bond

The bond principal, or the person or entity on whose behalf the bond is pledged, must be the operator as named on the Plan of Operations or Notice filed with the BLM and as notified of the estimated reclamation costs and the bond requirement. If a personal bond is used, the same person or entity also should be reflected as providing the financial security. If a third party is providing either the bond or the financial instrument pledged to secure the bond, a rider must be obtained from the third party that states they are pledging the bond on behalf of the operator (Consent of Surety, BLM Form 3809-4) or pledging the financial instrument to secure the bond (a rider). See Chapter V – Processing Riders to Bonds.)

THE OPERATOR MUST BE COVERED BY THE BOND

J. Review of Decisions

The review/appeal process is different for decisions issued by a SO than for decisions issued by a district or field office. A decision issued by a SO is a decision issued by or on behalf of the State Director. Therefore, a decision issued by a SO is not subject to the State Director review provisions of 43 CFR 3809. State office decisions are only appealable to the IBLA. Decisions issued by the BLM district or field offices are subject to and can be formally reviewed by the SO under the State Director review provisions at 43 CFR 3809.800.

**FORMAL
REVIEW
OF DECISIONS**

Because the review/appeal process is different, the appeals statements will be different for a decision issued by a SO versus a decision issued by a field or district office under the regulations at 43 CFR 3809.

CHAPTER III – Adjudicating Corporate Surety Bonds**A. General**

Please see the note at the end of this chapter regarding public and unauthorized access to all bonds, bond files, and the BSS.

This chapter covers the acceptance of corporate surety bonds that cover a single Plan of Operations (mining) or Notice (exploration) known as an individual bond, multiple operations in a single state (statewide bond), or operations conducted in more than one state (nationwide bond).

When Federal law requires or permits a person to give a surety bond through a surety, the person must satisfy the requirements specified by the Secretary of the Treasury (see 31 U.S.C. 9301 *et seq.*). The Department of the Treasury's Financial Management Service (FMS) publishes a list (Circular 570) in the *Federal Register* every July 1 and at their website which is located at:

http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm?

The Treasury website contains the most current information on surety companies because it is updated as changes occur in surety authorization. Questions may be directed to the Surety Bond Branch through the website or the telephone number given at the website.

A surety is one who has become legally liable for the debt, default, or failure in duty of another. Surety bonding is a third-party agreement among the surety company, obligee (BLM), and bond principal (operator or third-party posting bond on behalf of the operator).

Bonds are contracts. Surety bonds given to the BLM are performance bonds to guarantee performance of a contract, that is, reclamation as required and approved by the BLM in the Notice/Plan of Operations. The performance bond protects the BLM, and ultimately the taxpayers, from financial loss should the operator fail to perform the reclamation in accordance with the terms and conditions of the Notice/Plan of Operations, and the regulations and laws under which the operations were allowed. If the operator breaches the contract, and is in default, the surety has an obligation to the BLM to complete the work or pay for the cost of reclamation up to the penal sum. The surety may act on behalf of the operator only after the BLM has found and declared the operator in default of the obligation to the BLM. The Plan, laws, and regulations set out what constitutes default. Most often it is failure to perform reclamation or other obligations of the Notice filed with the BLM or the

KEYWORDS

**INDIVIDUAL,
STATEWIDE,
NATIONWIDE
BOND**

**AUTHORITY
FOR
CORPORATE
SURETY
BONDS**

**DEFINITION
OF SURETY**

**BONDS ARE
CONTRACTS**

Plan approved by the BLM. When the BLM declares default, the surety may arrange for a replacement operator, retain the original operator, let bids for completion of the reclamation be initiated, or pay the penal sum to the BLM.

In general, the types of sureties are referred to as follows:

TYPES OF SURETIES

1. An individual surety is one person, as distinguished from a business entity, which is liable for the entire penal sum of a bond.
2. A corporate surety is a business licensed under various insurance laws and, under its charter, has legal power to act as surety for others.
3. A co-surety is one of two or more sureties that are jointly and severally liable for the penal sum of the bond. A limit of liability for each surety **may** be stated; however, the bonds are obligated to the operations as a whole and may not be limited to amount, specific areas, or components of the operations.

The Department of the Treasury updates Circular 570 with (1) newly approved surety companies and (2) termination of the authority for any surety to qualify as a surety on Federal bonds.

CIRCULAR 570

For each surety or reinsurance company that is certified by Treasury to issue federal bonds, Circular 570 contains the legal name of the company (no group names), the business mailing address of the company's main (home) office, the company's underwriting limitation, the state of incorporation, and the surety licenses by state. The underwriting limitation is based on Treasury's financial review of the company and represents the largest bond amount a company can write without reinsurance or coinsurance (31 CFR 223.10 and 223.11). Although changes in a surety company can occur anytime during the year, a company's underwriting limitation typically only changes on July 1. The companies listed in the front of the Circular 570 can directly write or reinsure a bond. The surety companies listed in the back of the Circular 570, certified reinsurers, can only provide reinsurance.

Important information is contained in the footnotes at the end of Circular 570 and should be read carefully. Additional information concerning sureties may be obtained from individual state insurance departments and the Financial Management Service (FMS), Surety Bond Branch, U.S. Department of the Treasury. A list of the state insurance departments and the telephone number for each is located at the end of the Circular.

CIRCULAR 570 FOOTNOTES

Coinsurance occurs when more than one company is directly writing a bond. The companies are jointly liable up to their liability amount as specified on the bond form. For example, a required bond amount of \$30 million may be achieved by co-surety A providing a bond for \$5 million, co-surety B providing a bond for \$10 million, and co-surety C providing a bond for \$15 million. The co-sureties are jointly and separately responsible for any and all defaults on the operations, and the bonds may not be limited by specific areas, timeframes, or components of the operations. **Co-surety bonding is not acceptable by the BLM for federal bonding requirements.**

COINSURANCE

Reinsurance occurs when one surety directly writes the bond for the entire amount **and** shares the excess amount (above its underwriting limitation) with another Treasury-authorized surety or reinsurance company (up to its underwriting limitation), and provides proof of reinsurance on Standard Form 275 (SF 275, Reinsurance Agreement in Favor of the United States). For example, a required bond amount of \$30 million is achieved by a surety writing a bond for \$30 million. The surety has an underwriting limitation of \$10 million. One or more reinsurers will execute SF 275 to total \$20 million, the excess amount. In the event of default of the operator and the surety's inability to fulfill its obligation of the \$30 million, the reinsurer is responsible for any obligation remaining under the bond up to the amount of the reinsurance agreement. See 48 CFR § 28.202(a)(4) and Coeur Rochester, Inc. (156 IBLA 372 (2002)) for more information.

REINSURANCE

Bond adjudicators can sign up at the FMS website (<https://www.fms.treas.gov/fmsweb/EmailSubscribeAction.do>) to receive Notices directly from the FMS, Surety Bond Branch, regarding interim changes in the status of approved surety companies.

**FMS
NOTIFICATION**

NOTE: In the remainder of this handbook, the terms “docket” and “mail room” are used interchangeably, as the circumstances may exist in individual offices. Also, the division or responsible official may differ from state to state. Follow the delegation of authority in your state (Manual Section 1203).

**DEFINITIONS
OF DOCKET
AND MAIL
ROOM**

Consent of surety means a permission of, or an acknowledgment by, a surety that its bond given in connection with a contract continues to apply to the contract as modified. For example, if an operator wishes to sell or assign operations to another party, the bond is not transferred automatically. A consent of surety must be furnished to allow the new operator to be covered under the bond (see Chapter V, Processing Riders to Bonds), or the new operator must furnish his own bond coverage. Consent of surety may be required for other material changes to the bond

**CONSENT OF
SURETY**

as specified in the terms and conditions of the bond. A surety will generally provide its own rider with a power of attorney which is an acceptable alternative to the BLM Consent of Surety, Form 3809-4.

A Power of Attorney (POA) is a written document that authorizes one to act for and obligate another party. In the context of Federal surety bonds, a POA is an instrument under seal that appoints an attorney-in-fact to act on behalf of and obligate the surety company in signing bonds. See 48 CFR 2.101. Illustration 3-3 is a sample POA for a surety bond.

POWER OF ATTORNEY

An attorney-in-fact is an agent, independent agent, underwriter, or other company or individual holding a power of attorney granted by a surety. Careful examination of the power of attorney is required to verify currency and authenticity of power of attorney and the powers/limitations of the attorney-in-fact.

ATTORNEY-IN-FACT

Penal sum is the sum agreed upon in a bond, to be forfeited if the conditions of the bond are not fulfilled. The penal sum specified in a bond is the maximum payment for which the surety is obligated.

PENAL SUM

Third-party surety is surety in the general sense of the word; that is, one who has contracted to be answerable for the debt, default, or miscarriage of another. On BLM bonds, a third-party surety is an entity, not in the business of a corporate surety and not the stated operator, that posts the bond on behalf of the operator and that is liable for up to the penal sum of the bond.

THIRD-PARTY SURETY

In the event of operator default, the surety has the option of one of the following to fulfill its duty or obligations under a performance bond:

SURETY OPTIONS

1. Perform – Provide support to the operator in default to finish reclamation.
2. Perform – Surety may obtain its own contractor to complete the reclamation.
3. Perform – Surety may authorize and pay the BLM to contract the reclamation.
4. Pay – Surety submits the penal sum of the bond to the BLM.

B. Terrorism Risk Insurance Act of 2002

The Terrorism Risk Insurance Act of 2002 ensures the availability of commercial property and casualty insurance coverage for losses resulting from acts of terrorism. A surety bond received by the BLM may have a “Notice from Surety Required by the Act” attached to the surety bond. If such a Notice is received, return the Notice to the surety stating that the Notice is an agreement between only the surety and the bond principal and does not affect the BLM’s authority or the BLM’s ability to attach the full penal sum of the bond, and therefore, requires no action on the BLM’s part.

C. Adjudicating Surety Bonds

Responsible Official	Step	Action	Keywords
Mailroom	1	Receive and date stamp bond. Route for automated entry.	
BSS Entry	2	Create the bond abstract in the BSS following the procedures establish in the BSS User Guide	AUTOMATED NOTATION
		Nationwide bonds must be promptly entered into the BSS, i.e., within 5 working days of the action involved (e.g., bond filed by an entity, bond accepted, adjustment to the amount obligated, etc.). Failure to enter a nationwide bond timely may cause the delay of approval of various actions in other BLM offices. Obligations against a nationwide bond must also be promptly reflected in the bond system to prevent unfunded liability authorizations.	
CR Entry		Enter Action Date: Date Bond Filed; DE2960, AC 468, pending action required. Enter Action Date: Date Bond Filed; DE2910, AC 376; Action Remarks: Bond amount, form number, and edition.	
Adjudication	3	If not already received, request written Notice as to the required bond amount determined by the FO or other responsible personnel as delegated in your state.	REQUIRED BOND AMOUNT

Responsible Official	Step	Action	Keywords
Adjudication	4	Examine bond for the following:	ACCEPTABLE BOND FORM
	4a	A surety bond must be submitted on the most current Form 3809-1.	
	4b	Bond is properly executed, including principal's corporate seal (if a corporate seal is required by the state in which the bond is submitted) affixed/embossed on the bond form. The relationship of the signatory to the principal is to be shown on the bond or in an attachment. Contact the state corporations department in your state to determine if your state requires corporations to have a corporate seal in your state.	EXECUTION BY PRINCIPAL
	4c	Verify the bond principal is the operator as given in the Plan or Notice filed with the BLM. The operator should be the addressee on the bond determination, or similar letter/decision, sent by the BLM stipulating the conditions under which operational activities may begin. The principal on the bond should be the operator. If the principal on the bond is not the operator, Consent of Surety Form 3809-4 must be filed stating the bond is being pledged by the third-party to cover the operations of the operator.	PRINCIPAL AND OPERATOR THIRD PARTY SURETY
4d	Access the U.S. Treasury's Circular 570 website (http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm?) to verify the following: (1) The surety is certified by the U.S. Dept. of the Treasury to underwrite a bond for the Federal government. (31 CFR 223.1). The surety's name must be an exact match. (2) The state in which the bond was executed is shown in the surety's listing. (3) The amount of the bond does not exceed the underwriting limitation for the surety according to the amount in Circular 570.	CIRCULAR 570 VERIFICATION	

Responsible Official	Step	Action	Keywords
		(4) The surety's address given in Circular 570 is the home office of the surety company. A copy of all correspondence concerning the bond must be sent to the surety home office. If the surety address on the bond is different than the Circular 570 address, send a courtesy copy to the surety home office address.	
		(5) Adhere to any information in the Circular 570 footnotes if applicable to the surety being reviewed.	
		(6) Print a copy of the Circular 570 page containing the specific surety information, or lack thereof, and place in the bond case file.	
		(7) If the surety company is not certified, return the unacceptable bond to the principal or surety by decision (see Illustration 3-1) stating the reason the bond is being returned is because the surety is not certified (see regulations at 31 CFR 223.1). Provide appeal rights in the decision and keep a copy of the bond for the record, e.g., in the event of appeal.	SURETY NOT CERTIFIED
Adjudication	4e	Make sure the bond is properly executed by a certified surety, with the seal of corporate surety embossed on bond form, accompanied by power of attorney (POA). See Step 5 below for steps to examine the POA.	CORPORATE SURETY SEAL
	4f	Check that principal and surety are indicated in the proper location on the bond.	
	4g	Bond is for at least the amount required by the correspondence received from the FO. Check that bond amount is properly indicated on the form. The dollar amount must be spelled out i.e., "Two Million Four Hundred Thousand and no/100 Dollars." A bond with an incorrect figure	AMOUNT OF BOND

Responsible Official	Step	Action	Keywords
		such as (\$2,400,00) must be returned for correction. However, a bond with the figure missing may be accepted if the correct amount is spelled out clearly.	
	4h	A surety bond number is not required. If the surety has not given a number on the bond, the bond may be referred to in the BLM's acceptance decision and on the bond abstract (field titled "Document ID") in the BSS as "Unnumbered Bond." If a number has been assigned by the surety, all correspondence should refer to this number, as well as to the BLM bond file number assigned at the time of BSS entry.	SURETY BOND NUMBER
	4i	Bond coverage should be indicated as to whether the bond provides coverage for an individual operation, statewide operations, or coverage of operations nationwide.	BOND COVERAGE
		<p>(1) If no indication of coverage, or if conflicting coverage, is given on the bond form, informal contact may be made with the surety's representative to determine the coverage intended and then the bond coverage may be noted by Adjudication. Note and sign the bond correction accordingly and provide the surety and principal with a copy of the corrected bond with the decision of acceptance of the bond.</p> <p>(2) If type of coverage cannot be obtained informally, the bond must be returned as unacceptable by decision.</p>	FAILURE TO INDICATE COVERAGE OR MULTIPLE BOND COVERAGES INDICATED
Adjudication	4j	If bond is an individual bond and the BLM serial number is missing or incorrect on the bond form, Adjudication should verify the serial number and fill in or correct it. Furnish a copy of the corrected bond to the surety and principal with the decision of acceptance of the bond.	BLM SERIAL NUMBER ON INDIVIDUAL BOND

Responsible Official Adjudication	Step	Action	Keywords
	4k	<p>If bond is a statewide bond and the geographic state is not named, obtain the correct state for the statewide coverage. If bond is a statewide bond and the geographic state shown on the bond is not under the jurisdiction of the SO receiving the bond, forward the bond to the proper SO by a memorandum (see Illustration 3-2). Send a letter to the principal and surety with a copy of the memorandum enclosed.</p> <p>NOTE: A nationwide bond may be filed in any BLM SO. A rider to a nationwide bond may be filed in either the SO that accepted the original nationwide bond or in the SO having jurisdiction of the operations affected by the bond rider (see Chapter V.B.3). Normally, riders are to be accepted by the SO maintaining the original bond unless immediate acceptance is necessary. If this is necessary, the receiving office transmits the rider to the office that maintains the bond after acceptance.</p>	<p>FILED IN WRONG BLM OFFICE OR STATE NOT NAMED</p> <p>NATIONWIDE BOND AND RIDER FILING LOCATION</p>
	4l	<p>Check that execution date on bond is completed and precedes date of filing of bond. If execution date is not completed, return bond to the principal.</p> <p>NOTE: Parties will sometimes attempt to file a bond to be effective at some future date. Postdated bonds are to be rejected and the parties advised that the bond may be executed with a provision that it will become effective at some certain later date, but the execution date must precede the date of filing. This will most often occur with a replacement bond to coincide with transfer of operations or surety premiums.</p>	<p>EXECUTION DATE COMPLETED</p> <p>DATE EXECUTION POSTDATED</p>
	5	<p>The POA is a component of a surety bond and must accompany the bond at submission. The POA shows proof of signing authority of surety's representative. If a bond is submitted absent the POA, the bond must be rejected. A sample POA for the BLM's reference only is shown at Illustration 3-3. The BLM should never draft or</p>	<p>POWER OF ATTORNEY</p>

Responsible Official	Step	Action	Keywords
		prepare a POA for a surety company or an operator.	
Adjudication	5a	Examine the POA as follows:	
	5b	The POA on its face must establish unequivocally that the person signing the bond is authorized to bind the surety.	AUTHORIZED SIGNATURE
	5c	Verify the POA recites that the surety company has appointed a named individual as its attorney-in-fact to undertake an obligation on its behalf.	ATTORNEY-IN-FACT NAMED
	5d	Verify the person signing for surety had the authority to do so on the date the bond was executed. This date on the POA must be the same as or <u>earlier</u> than the date the bond was executed.	DATE OF AUTHORITY
	5e	Verify the person signing for the surety had the authority to sign for the amount of money specified by the bond and is not restricted to a lesser amount.	MONETARY AUTHORITY
	5f	Verify the name of the entity appointing another and verify the certification of the appointing entity. If the POA provides that only an original is valid and a copy of the POA was submitted, without other evidence, a POA with a facsimile signature may be invalid. Sufficient evidence would be a statement that the surety fully intends to be bound by a facsimile signature. The POA must bear an original signature of a corporate official with a raised (embossed) corporate seal next to the certification.	AUTHENTICITY
	5g	Verify the POA is in effect on the date sealed. Verify that the POA by its own terms, has not expired prior to the execution of the bond. The POA will indicate when a seal that is in color, rather than a raised seal, is valid.	VALID POA

Responsible Official	Step	Action	Keywords
	5h	At the end of the POA, there should be a completed certificate indicating that the POA is still valid on a certain date. This certification must be dated the same date that bond is executed or within a few days thereafter (no significant passage of time).	
Adjudication	5i	Examine the POA carefully to ensure POA is not limited to any other conditions that could affect the bond being accepted.	OTHER LIMITATIONS
	5j	The bond and POA should be returned to the principal for correction of any defects in the POA. Send a copy of the decision returning the bond for correction to the surety.	RETURN DEFECTIVE BOND TO PRINCIPAL
	6	If bond is determined to be unacceptable, return bond to principal by decision indicating defects. Send copy to surety attorney-in-fact and surety home office.	UNACCEPTABLE BOND
		<p>NOTE: Since the bond is not considered effective until it is accepted by the United States, imposing a time limit for submitting the bond is not appropriate. Operators cannot be recognized by the BLM and cannot begin surface-disturbing activities prior to acceptance of a satisfactory reclamation bond for the operations in the amount required. Failure to file a satisfactory bond may be the basis for the BLM to take adverse actions, such as not approving a Plan or accepting a Notice, not allowing operations to begin or expand; or not recognizing a transfer of the operations.</p> <p>The FO may set a time limit for additional bonding to be submitted for an amended operation; failure to submit the required additional bonding may result in the FO finding the operator in noncompliance.</p>	
BSS Entry	7	Route for BSS entry. Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2960 AC 470; Action Remarks: Reason for	AUTOMATED NOTATION

Responsible Official	Step	Action	Keywords
		unacceptability.	
CR Entry		Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2910 AC 410; Eff Date, Bond #.	
Adjudication	8	If the bond is in order, prepare acceptance decision (see Illustration 3-4), effective as of the later of the following dates:	ACCEPTABLE BOND
	8a	Date complete bond was filed in the proper BLM office; or	
	8b	Effective date indicated on bond (this would normally occur only with a replacement bond where principal and surety want the acceptance to coincide with a bond premium date) but NOT earlier than date filed.	EFFECTIVE DATE
	9	After signature, distribute to the principal and surety (c/o attorney-in-fact). Courtesy copies are sent to surety home office, FO(s) or other operations office, and other surface management agencies, as appropriate.	
	10	Route for automated entry.	
BSS Entry	11	Enter Action Date: Date of decision showing bond accepted; DE 2960 AC 469; Action Remarks: Enter effective date of bond. If bond amount accepted is more than the bond amount required and obligated, note BSS as to bond amount remaining available in general remarks.	AUTOMATED NOTATION
CR Entry		Enter Action Date: Date of decision showing bond accepted; DE 2910 AC 909; Action Remarks: BLM bond number.	
Adjudication	12	File FO bond determination, bond and acceptance decision, and other associated correspondence in bond file.	

Responsible Official	Step	Action	Keywords
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D. Adjudication of Reinsurance Agreement

Reinsurance is a transaction which provides that a surety, for consideration, agrees to indemnify another surety against loss that the latter may sustain under a bond it has issued. Reinsurance is used by a surety when the total amount of the bond required exceeds the surety’s underwriting limitation. Reinsurance agreements must conform to the U.S. Department of the Treasury regulations at 31 CFR 223.10 and 223.11.

**DEFINITION
OF
REINSURANCE**

When reinsurance is contemplated, the BLM authorized officer generally will require the sureties to execute and submit a reinsurance agreement before making a final determination on the bond.

However, according to regulations at 31 CFR part 223, the BLM AO may accept a bond from the direct writing company in satisfaction of the total bond requirement. This is permissible until the necessary reinsurance agreement is executed, even though the total bond requirement may exceed the surety’s underwriting limitation, as long as the reinsurance is provided within 45 days after execution of the bond.

**MAY ACCEPT
BOND FOR
FULL
AMOUNT
REQUIRED**

Within 45 days after the execution of the bond, the surety and reinsurer will execute and submit the necessary reinsurance agreement to the BLM. For BLM mining bonds, the surety and reinsurer must use Standard Form 275, Reinsurance Agreement in Favor of the United States. The forms can be obtained as set out at 31 CFR 223.11.

- | | | | |
|---------------------|---|--|--|
| Adjudication | 1 | Examine the reinsurance agreement and accompanying POA following examination of a surety bond and power of attorney as set out in Subheading C, Adjudicating Surety bonds, Steps 1-7. Additionally, assure compliance with the regulations at 31 CFR 223.10 and completion of the sections of the reinsurance agreement in accordance with the instructions on SF 275. | ADJUDICATION
OF
REINSURANCE
AGREEMENT |
| | 2 | If the bond and reinsurance agreement are in order, prepare acceptance decision for both (see Illustration 3-5). | ACCEPTABLE
REINSURANCE |
| | 3 | After signature, distribute to the principal and surety (c/o attorney-in-fact) and reinsurance attorney-in-fact. Copies are sent to surety home office, FO(s) or other operations office, and other | |

Responsible Official	Step	Action	Keywords
		surface management agencies, as appropriate.	
	4	Route for automated entry.	
BSS Entry	5	Enter Action Date: Date of decision showing bond accepted; DE 2960 AC 469; Action Remarks: Enter effective date of bond. Choose the bond type for the reinsurance agreement from the BSS bond type list and tie the reinsurance agreement to the direct writing company bond. Be certain to use the Interest Relationship code (74) for Reinsurer. The BSS will require both a surety name and reinsurer name entry. The reinsurer name will be entered under the Surety Name portion of the bond screen. NOTE: The BSS will check to make certain the bond amount is not greater than the limit amount for the surety company limit and the reinsurer limit added together. If it is, an error message will be displayed. Enter AC 113 to each bond showing the corresponding bond in the Action Remarks field, e.g., “Add’l bond at NVBxxxxxx.”	AUTOMATED ENTRY
Adjudication	6	File the FO bond determination, bond and acceptance decision, and other associated correspondence in the bond file.	

E. Actions Taken When U.S. Treasury Removes a Surety as Certified to Underwrite Bonds for the Federal Government

Upon notification that Financial Management Service (FMS) has terminated a company’s certificate of authority to qualify as a surety on federal bonds, the BLM must review outstanding obligations and take action necessary to protect the BLM including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with decertified surety.

Adjudication	1	Receive notification of surety decertification.
	1a	Obtain a listing of the bonds underwritten from the BSS.
	1b	Enter AC 488 or 490 in BSS, as described in DE2960. AC 490 requires pending action.

Responsible Official	Step	Action	Keywords
Adjudication	1c	Determine the properties or operations covered by the bonds and administered by the various field or district offices. Send a request (Illustration 3-6) to the affected offices to review outstanding reclamation or other liabilities on the operations administered by each office.	
	1d	Send a request (Illustration 3-6) to other surface management agencies having jurisdiction of the operations to review outstanding liabilities.	
Field Office	2	Inspect bonded operations.	DETERMINE NEED FOR CONTINUED BOND
	2a	Review outstanding reclamation and associated costs. Determine if there is a need for continuing bond coverage.	
	2b	Respond to Adjudication as to any continuing need for bond coverage and amount needed.	
Adjudication	3	If continuing bond coverage is not required, terminate the period of liability under the bond (the bond which was underwritten by the decertified surety) per guidance in Chapter XI, Termination of the Period of Liability.	BONDING NO LONGER REQUIRED
	4	If outstanding liabilities remain on any mining operations under a bond of the decertified surety, notify the surety that the bonds remain in full force and effect until such time as satisfactory replacement bonding is accepted from bond principal.	CONTINUED BONDING REQUIRED
	5	Send decision to operator, and bonded principal if different entity than the operator, that a replacement financial guarantee must be submitted to the BLM for the bonds issued by decertified surety (see Illustration 3-7, Replacement Bond Required).	NOTIFY OPERATOR REPLACEMENT BOND REQUIRED
	6	If a replacement bond is submitted, follow procedures in Chapter III or IV and VIII to adjudicate the replacement bond.	BOND SUBMITTED

Responsible Official	Step	Action	Keywords
Adjudication	7	Upon the acceptance of the replacement bond, the period of liability under the prior bond may be terminated (see Illustration 3-7, Replacement Bond Required).	TERMINATE PRIOR BOND
Adjudication or Operations	8	If operator fails to submit satisfactory replacement bonding, follow procedures in Chapter XII, Default and Collection on Bonds, to collect the bond. Additionally, continued operations or additional disturbance may not occur and the operator may be subject to an order of noncompliance and other actions as deemed appropriate by the regulations and FO.	FAILURE TO SUBMIT A NEW BOND

F. Actions Taken When BLM Receives Notice of Bond Cancellation from Surety

Upon the receipt of a Notice of cancellation from the surety company, the BLM must review any outstanding obligations and take action necessary to protect the BLM, including securing a new bond, if needed.

Adjudication	1	Receive notification of surety's election to cancel bond.
	1a	Check that the correct surety bond is referenced by the cancellation Notice in that it correctly cites the surety bond number and the amount of the bond. (If incorrect, the surety will most likely reissue the Notice of cancellation.) Also, note the specified date of cancellation. The BLM requires a 90-day notification of cancellation per the surety bond, Form 3809-1. Often a surety company will give a date of cancellation that is much sooner than required. If this is the case, send a decision to surety as soon as possible acknowledging receipt of the Notice of cancellation but deferring cancellation date to 90 days from the BLM's date of receipt of the cancellation Notice.
	1b	Determine the operations covered by the bond and FO (or offices) involved. Update BSS with AC 472 as described in DE 2960. Action Code

Responsible Official	Step	Action	Keywords
		472 requires pending action.	
	1c	Send a request to the office(s) to review outstanding reclamation or other liabilities on the operations administered by each office. An email request and response containing the facts are sufficient (see Illustration 3-6). Send request to other surface management agencies having jurisdiction over the operations for review of outstanding liabilities.	
Field Office	2	Inspect bonded operations.	
	2a	Review outstanding reclamation and associated costs. Determine if there is a need for continuing bond coverage.	DETERMINE NEED FOR CONTINUED BOND
	2b	Respond to Adjudication as to the continuing need for reclamation bond coverage and the amount needed.	
Adjudication	3	If continuing bond coverage is not required, terminate the period of liability under the bond per guidance in Chapter XI, Termination of the Period of Liability.	BONDING NO LONGER REQUIRED
	4	If outstanding liabilities remain on any mining operations under a canceled bond, send a decision to the operator, and bond principal (if different than the operator), and the surety that a replacement bond is required, that the current bond remains in full force and effect for liabilities incurred prior to date of cancellation, and that additional operations may not occur, or at FO discretion, operations may not continue, after the date of cancellation until satisfactory bonding has been accepted by the BLM. See Illustration 3-7, Replacement Bond Required.	CONTINUED BONDING REQUIRED. NOTIFY OPERATOR AND SURETY
	5	If a replacement bond is submitted, follow procedures in Chapters III, IV, and VIII to adjudicate the replacement bond.	REPLACEMENT BOND SUBMITTED

Responsible Official	Step	Action	Keywords
Adjudication	6	Upon the acceptance of the replacement bond, notify the surety of the acceptance and terminate the period of liability of the prior bond, if within the 90-day period.	TERMINATE PRIOR BOND
	7	If the surety submits a Notice of Bond Reinstatement, or otherwise cancels the Bond Cancellation Notice, within the 90-day period, prepare Illustration 3-8 to accept rescission with no lapse in bond coverage.	SURETY RESCINDS CANCELLATION
Adjudication and Field Office	8	If the operator fails to submit satisfactory replacement bonding, follow procedures in Chapter XII, Default and Collection, to initiate action for collection of the bond. Also, continued operations or additional disturbance may not occur and the operator may be subject to a Notice of noncompliance and other actions as deemed appropriate by the FO.	FAILURE TO SUBMIT NEW BOND

CHAPTER IV – Adjudicating Personal Bonds and the Financial Pledges**A. General**

1. Personal Bond Overview

a. What is a personal bond?

A principal (obligor) may furnish a personal bond rather than a surety bond to ensure compliance with all the terms and conditions of the Plan of Operations or Notice-level operations. A personal bond is a contract between the principal and the BLM which is secured by a financial instrument that is pledged to the BLM. A personal bond is a two-party contract between the obligee (the BLM) and the obligor (bond principal). A personal bond is secured by a financial pledge that is provided by the bond principal with its own (personal) funds.

b. How does a personal bond differ from a surety bond?

A surety bond is a contract between three parties, while a personal bond is only between the BLM and the operator or bond principal. This is true even of letters of credit (discussed in detail in section IV.C below) because the BLM is not a party to the contract between the bank and the operator that secures the operator's contract obligations to the BLM. Because personal bonds do not involve sureties, they are not subject to the guidance in Circular 570 or other Treasury Department regulations governing certification of sureties.

2. Form 3809-2, Surface Management Personal Bond

A personal bond consists of both the bond contract (Form 3809-2) and the financial instrument that is pledged as security for the bond. A personal bond cannot be accepted until both components have been determined satisfactory by the BLM. The Surface Management Personal Bond, Form 3809-2 (August 2014), contains a power of attorney to the Secretary of the Interior for control of the funds including the authority to collect the proceeds under bond upon default of the operator. This chapter provides guidance on adjudicating the various financial pledges in Sections “B, C, D, and E” and guidance to adjudicate Form 3809-2 in Section “F.” In order for the BLM to accept a personal bond, both the financial pledge and Form 3809-2 must be satisfactory.

3. Class III Privacy Information

Access by the public and unauthorized BLM personnel to the original bond files should be limited. The bonds may be examined by an interested party, but examination must be under careful scrutiny and constant supervision by the BLM office maintaining these bond files. Written permission from the bond

owner may be required by the BLM. Some information contained in financial instruments is categorized as Class III privacy information and is not releasable even under a FOIA request.

According to the BLM Manual 1278, External Access to BLM Information, “[P]ublic files may contain some information concerning ongoing negotiations; financial information; business information; personal and privacy information; investigations; internal memoranda; drafts and working documents; proprietary, geological and geophysical information relating to wells; or other sensitive information. The above information, if it exists, shall be segregated within the file. This information should be removed from the file before providing access to the public and requests for this type of information must be made under the FOIA because an exemption would apply.”

Any such information must be redacted by the adjudicator on a copy of the financial instrument prior to the copy being made available for viewing. In addition to proprietary and confidential information, privacy information is also kept in the BSS. Bond information can only be obtained through a FOIA request. Since some information may not be releasable, bond abstracts and reports generated from the bond system are to be carefully scrutinized as to Class III privacy information before being distributed by the bond adjudicator under a FOIA request. Issued decisions may be given to the public and BLM FOs without privacy data.

Many BLM offices require written permission from the bond principal prior to the bond and financial instruments being examined by a party other than the bond principal. Considering the FOIA, determine your state’s policy before allowing the bonds, bond case files, or BSS abstracts to be viewed by any party other than the bond principal. If you have any questions about whether to allow a party other than a bond principal to examine the bond, bond case file, or BSS abstracts, contact the Solicitor’s Office.

4. Safekeeping of Negotiable Instruments

A negotiable financial instrument is always safeguarded as designated by the BLM office accepting and maintaining the instrument. Negotiable instruments must either be kept in a safe in the accounts section or at an offsite location, if such has been designated by your office. Keep a copy of the financial instrument in the bond file.

5. Acceptable Financial Instruments for a Personal Bond

A personal bond may be secured by any of the following types of instruments:

- A guaranteed remittance (deposit of cash, cashier’s check, certified check, bank draft, U.S. postal money order, wire transfer, or credit card)

- A negotiable security of the United States (U.S. Treasury note, bill, or bond)
- A certificate of deposit (or other fixed time deposit)
- An irrevocable letter of credit (LC)
- Other financial guarantees per 43 CFR 3809

6. Authority for Financial Instruments to Secure Surface Management Bonds

The authority for U.S. Treasury securities, surety companies, and guaranteed remittances to secure bonds given to or required by the Federal government, including performance bonds required by 43 CFR 3809 is found at 31 U.S.C. §§ 9301-9303. In addition, in October 1986 Section 303 of FLPMA was amended providing the authority for a party wishing to obtain surface management bonding to provide an LC or evidence of bond held by the state in which the operations are conducted as a financial pledge for a surface reclamation bond.

7. Unacceptable Financial Instruments

Personal checks (which includes company or corporate checks) or checks drawn on a foreign bank, such as Canada, are not acceptable to secure personal bonds. Pass book accounts, savings accounts and other accounts which are “liquid” in nature in that they do not have “fixed” terms such as the amount, the period of time deposited, etc., United States savings bonds, and notes/bonds issued by states, local governments, or private companies are not acceptable securities for bonds. Other financial instruments or guarantees may be determined to be unacceptable.

The regulations at 43 CFR 3809 also discuss corporate guarantees. A corporate guarantee is a statement of financial ability from a company that was accepted by the state and acknowledged by the BLM for up to a maximum of 75 percent of the estimated reclamation costs as of January 20, 2001. The only BLM office to acknowledge a corporate guarantee for bonding was BLM Nevada. As of 2001, the BLM no longer accepts new corporate guarantees to cover surface disturbance under the 3809 regulations. The corporate guarantees that were in place on January 20, 2001, remain in place in accordance with the regulations.

8. Regulators of Financial Institutions

All financial institutions operating in the United States are examined and regulated by one of four Federal offices having oversight of the financial institutions in the United States. The four offices are as follows: U.S. Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of Currency (OCC), Office of Thrift Supervision (OTS), and the Federal Reserve Washington Office and District Banks (Federal Reserve System).

a. Federal Deposit Insurance Corporation (FDIC)

The deposits of the majority of financial institutions are insured by FDIC. Some institutions are commercial (i.e., not maintaining retail customer deposits), and are, therefore not regulated by FDIC. These banks are regulated by one of the other three offices, and LCs from such are acceptable. Typically, LCs are not covered by FDIC insurance. More information about FDIC insured deposits can be found in IV.D below. The deposits of credit unions are generally insured by FDIC or the National Credit Union Administration (NCUA).

b. Federal Reserve System

The Federal Reserve System, or the “Fed” as it is commonly called, regulates about a third of the Nation’s banks. The Fed also maintains bank accounts for the U.S. Department of the Treasury and other government agencies.

9. When is a bond effective? When can operations begin?

Bonds are not effective until accepted by the United States. Acceptance or rejection of a bond is achieved through a BLM decision. Operators cannot begin surface disturbing activities until a satisfactory bond is accepted by the BLM and subsequent Plan approval or permission to disturb the surface under Notice-level operations or a Plan of Operations is given to the operator by the Field Manager, or other delegated official (see BLM WO and State Manual Section 1203, Delegation of Authority).

Failure to file a satisfactory bond may be the basis for the BLM to take an action such as not approving a Plan or Notice, not allowing operations to begin or expand, or not recognizing a transfer of the operations. Since a bond is not effective until it is accepted by the United States, imposing a time limit for a bond to be submitted to the BLM is not appropriate.

B. Guaranteed Remittance (Cash Bond)

One type of financial instrument accepted to secure a personal bond (Form 3809-2) is a guaranteed remittance. When a guaranteed remittance is submitted to secure a bond, the bond is commonly called a “cash” bond. It is called a cash bond because the funds are deposited and retained by the BLM in a suspense (unearned) account pending final reclamation of the lands which the bond protects unless collected due to operator default. A guaranteed remittance submitted to the BLM has been obtained by the remitter in exchange for cash given to the bank or other financial institution.

A cash bond is rarely physical dollars; in fact most other BLM programs do not allow actual cash to secure a bond. However, the regulations at 43 CFR 3809 do allow cash to secure a personal bond for 3809 activities. If the bond adjudicator also works bonds in other programs, it is

advisable to be aware of whether a particular program allows cash bonds. A cash bond may be secured by any of the following guaranteed instruments: certified check, bank draft, USPS money order, cashier’s check, credit card charge (maximum determined by the U.S. Treasury – check with CBS personnel), or wire transfer. The funds are deposited into the BLM’s suspense account, and as with all funds in suspense, a cash bond must be reconciled on the accounts aging analysis as to its continuing need.

The New York Federal Reserve is currently the only location that can accept a wire transfer (Fedwire) for the BLM. If a customer wishes to use a wire transfer to secure a bond, provide the following instructions for a Type 1000 Funds Transfer Message to be made by the customer’s financial institution to Treasury New York City (Treasury NYC):

<u>Tag Name</u>	<u>Tag #</u>	<u>Required Information</u>
Type/Subtype Code (1510)	1000	
Amount	2000	\$9,999,999.99
Sender Financial Institution	3100	Sender ABA# and Name
Sender Reference	3320	Filled in by Sender
Receiver Financial Institution	3400	021030004 TREASURY NYC
Beneficiary	4200	14110008
Originator to Beneficiary Info	6000	Filled in by Sender

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive guaranteed remittance and forward to accounts.	
Accounts	2	Receive the guaranteed remittance. There should be an indication from the customer as to the purpose of the remittance. For more information about this process, ask your Accounts and Receiving section(s). The remittance must be payable in U.S. dollars.	
	2a	Validate remittance and prepare a Collection and Billing System (CBS) receipt to indicate the amount of the remittance and place the funds in a suspense account for the correct program. If indicated that this submission is for an individual bond and a serial number is given, ensure the serial number is reflected on the CBS receipt, or indicate as a statewide or nationwide bond, as appropriate.	CBS RECEIPT

Responsible Official	Step	Action	Keywords
	2b	Forward the CBS receipt to Adjudication along with any correspondence, bond, envelope, etc. that is received with the funds. Accounts may provide Adjudication a copy of the check.	
BSS Entry	3	Create the bond abstract in BSS following the BSS User Guide and all applicable data standards. Enter Action Date: Date Bond Filed; DE 2960 AC 468, pending action required.	AUTOMATED NOTATION
	3a	Request NID from the NOC by email if any of the parties (operator, remitter, principal, co-principal) to the bond are not in BSS Master Name.	
CBS Entry	3b	For individual bond only: Enter Action Date: Date Bond Filed; DE 2910 AC 376 for the operational serial number covered by the bond.	
Adjudication	4	Determine the adequacy of the financial instrument.	
	4a	If a required bond amount has been established by the BLM FO, verify the deposit is for no less than the amount required. The deposit may be for a statewide or nationwide bond and exceed an amount set by the FO for a single operation. However, the amount submitted must correspond to the amount written on the bond.	
	4b	If the deposit is for an individual bond and a determination of the required bond amount has not yet been received from a BLM FO, contact the FO to obtain the determination. In the absence of a determination, the bond may be accepted, all else being regular, but will have no reclamation obligation against the bond until the FO issues its determination as to the estimated cost of reclamation and	

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Responsible Official	Step	Action	Keywords
		the operator is informed of the required bond amount.	
Adjudication	5	If the remittance is determined to be acceptable, proceed to Subheading F below to adjudicate the bond. The bond contract (Form 3809-2) must accompany cash bonds. Review the bond form to ensure it is properly completed, notarized, etc.	ADJUDICATE THE BOND
	6	If the bond, Form 3809-2, is unacceptable, return the bond to the principal for correction and retain the guaranteed remittance pending receipt of a corrected bond.	UNACCEPTABLE BOND
	7	Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2960 AC 470; Action Remarks: Reason for unacceptability.	AUTOMATED NOTATION
CRS Entry	7b	Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2910 AC 410.	
	8	If all is in order, prepare the acceptance decision (see Illustration 4-1). After signature, transmit original decision to operator/bond principal and remitter, if different than operator, with copies to the bond file and FO or other solid minerals operations staff.	ACCEPTABLE BOND
		The bond is accepted with an effective date being the date a satisfactory bond and a satisfactory financial instrument are received in the proper BLM office. If the bond and financial instrument were received on separate days, the effective date for bond acceptance would be the later date of receipt of the two instruments.	EFFECTIVE DATE
	9	As necessary, informally let the appropriate FO know of the actual acceptance of the	

Responsible Official	Step	Action	Keywords
		bond. Because of the short timeframe in which cash bonds are often filed, the FO staff may be waiting for notification that such a bond has been accepted in order to take some action, e.g., approve disturbance, or to avoid taking some action, e.g., issue noncompliance orders.	
BSS Entry	10	Enter the bond into BSS following the current guidance in the BSS User Guide. Enter Action Date: Date Bond Accepted; DE 2960 AC 469; Action Remarks: Enter effective date of bond.	AUTOMATED NOTATION
CRS Entry	10a	Enter DE 2910 AC 909; Action Remarks: Enter effective date of bond. Enter DE 2910 AC 460; Action Remarks: Amount Obligated.	
Adjudication	11	When bonding is no longer required, prepare the decision terminating the period of bond liability and authorizing a refund. Send the decision to the operator and make a copy for Accounts along with a copy of the CBS receipt, for when the refund of the funds held in suspense is initiated. Additional information on terminating the period of liability under the bond can be found in Chapter XI of this handbook. See Illustration 11-4 for terminating the period of liability under a personal bond secured by a guaranteed remittance.	TERMINATING THE BOND LIABILITY
Accounts, Adjudication, or Other Appropriate Personnel	12	The CBS refund process for a cash bond: (1) Adjudication authorizes the refund in the CBS system; (2) accounts processes the refund request; (3) refund is approved; and (4) the request is sent electronically to Treasury for a refund check to be issued.	REFUND AUTHORIZED
BSS Entry	13	Enter Action Date: Date of Decision Terminating the Period of Liability; DE 2960 AC 473; Action Remarks: Effective date of	AUTOMATED NOTATION

Responsible Official	Step	Action	Keywords
		termination of period of bond liability Enter AC 970, Case Closed.	

C. Irrevocable Letters of Credit

An irrevocable letter of credit (LC) secures a bond with an unconditional promise to pay up to a stated amount of money to the BLM under certain conditions. An LC is deemed “irrevocable” unless the title and text clearly specifies the LC in question is “revocable.” The BLM does not accept revocable LCs. The most common conditions to receive payment are that the BLM (the LC beneficiary) must ask for payment in a format specified by the financial institution that issued the LC, the request for payment must be made before the expiration date of the LC, and request for payment must be made at a location specified in the LC.

The LC is a contract between the issuing bank and the LC applicant (usually the BLM operator, the bond principal or obligor, or a third party to the bond), with the BLM as the beneficiary of the LC. If a bank is unable to issue an LC under its own policies, it will request another bank to issue the LC for its customer, and the first bank will become the advising bank. Many LCs contain language requiring the beneficiary to provide a statement that the LC applicant is in default on the underlying contract in order to draw on the LC. However, the language of any LC the BLM accepts should not require the BLM to state that the applicant is in default in order for the BLM to draw on the LC (Federal Acquisition Regulations (FAR) 48 CFR Parts 28 and 52).

The LC must be issued by a financial institution organized and authorized to do business in the United States. There are three basic sets of rules that govern LCs: (1) the Uniform Commercial Code (UCC) Article 5; (2) the ICC Uniform Customs and Practices (UCP) 600 (2007 Revision); and (3) the International Standby Practices (ISP). The UCP is the standard guidance for LCs accepted by the BLM. A copy can be obtained through the website <http://www.iccwbo.org/>.

The \$100,000 Federal deposit insurance limit for deposits that an obligor may have with a financial institution does not apply to LCs because the guarantee of payment under the LC is made by the financial institution directly to the BLM by demand (see 48 CFR § 28.204-3(b)). LCs are not depositor accounts to which FDIC insurance applies. Therefore, the BLM is not concerned with FDIC insurance when the amount of an LC submitted to the BLM exceeds the FDIC limit. Whatever the LC applicant gives the bank as collateral for the LC is a private matter between the bank and the LC applicant and is of no concern to the BLM.

It is essential to be aware that an LC is subject to its own separate rules which are strictly enforced. The most important rule to remember is that all requests for funds must be made prior to the expiration date and in the format required by the bank. The bank’s defenses to non-payment of the LC are few and easily understood; therefore, the BLM beneficiary will very likely be paid in a timely manner. The defenses available to a surety for delayed payment to the BLM (i.e., obtaining a contractor for the purposes of inspecting operations and calculating reclamation costs in order to decide whether to pay the penal sum of the bond or to assume

performance of the work) are not available to the financial institution which issued the LC.

In response to informal contacts with a party wishing to obtain an LC for a bond, provide the party with bond information containing a personal bond form and a copy of a sample LC that is acceptable to the BLM (see Illustration 4-2). Advise the party to contact a financial institution located in the U.S. that will prepare an LC.

The LC must bear the original signatures of two officers from the financial institution issuing the LC. The LC should bear the seal of the issuing bank; if the laws of the state under which the bank is chartered do not require a seal for the bank, then the bank must state in the LC that a bank seal is not required under the laws of that state (obtain a Statutory Citation, e.g., 33 Iowa Rev. Stat. Sec. 34).

If desired, the bank may complete any acknowledgment appropriate for the state in which the LC is issued, but such acknowledgment is not required by the BLM.

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive and date stamp the bond contract (Form 3809-2) and LC. Because this document is the guarantee of payment, it needs to be safeguarded and should be hand carried to Adjudication. If the LCs are kept in a safe in the accounting section, a copy of the LC should be made and the original LC placed in a fireproof, locked safe. If the LC is kept in a secured area in Adjudication, then the original LC will be given to Adjudication.	
Adjudication	2	Verify LC and bond have been date stamped. Copy the LC and place original in fireproof, locked safe immediately. Since the LC is a negotiable instrument, it must be safely secured at all times with limited access by BLM employees.	SAFEGUARD LC IN A LOCKED SAFE
BSS Entry	3	Enter bond into BSS according to procedures in the BSS User Guide.	AUTOMATED NOTATION
	3a	Enter Action Date: Date bond filed; DE 2960 AC 468, pending action required.	
	3b	RECOMMENDED: Obtain a NID for the issuing financial institution, (and advising	

Responsible Official	Step	Action	Keywords
Adjudication	4	<p>financial institution, if applicable) for the remitter of the LC. It is not mandatory that the BSS abstract reflect this information. However, if the information is entered in the BSS, it makes it easier to identify all the affected bonds when financial institutions merge, liquidate, etc.</p> <p>Read the LC. If there are terms, phrases, or conditions not understood, review the UCC rules and/or UPC publication for clarification or discuss the language with the financial institution issuing the LC. If necessary, for a determination of acceptability to the BLM, send a copy of the LC to the Solicitor’s Office for review and opinion.</p> <p>Examine the LC for the following:</p>	
	4a	<p>The LC must be payable to the Department of the Interior BLM. Be sure the LC bears the correct address of the BLM office accepting the LC and maintaining the bond, i.e., the SO.</p>	PAYABLE TO DOI/BLM
	4b	<p>The initial expiration date of the LC must be not less than 1 year after the date filed with the BLM. There may be some discretion exercised in accepting an LC with an initial expiration date that is slightly less (<30 days) than 1 year from the date the LC was filed, as long as the automatic renewal provision is included in the LC.</p>	EXPIRATION DATE
	4c	<p>The LC must contain the automatic renewal provisions in at least 1-year increments.</p>	AUTOMATIC RENEWAL
	4d	<p>In some instances, financial institutions incorporate a clause establishing a final day of renewal 2-3 years in the future (also known as a “drop dead clause”). Prepare the decision accepting the LC having such a date/clause to clearly place the responsibility on the financial institution to notify the BLM</p>	DROP DEAD CLAUSE NOT ACCEPTABLE

Responsible Official	Step	Action	Keywords
		90 days prior to that final renewal date of its intent not to renew the LC.	
	4e	The LC must contain provisions allowing collection by the BLM for failure of the obligor to replace bond if 90-day notice is given by the bank that the LC will not renew.	90 DAY NOTICE TO BLM OF LC NONRENEWAL REQUIRED
		Verify that the LC contains no additional language or typographical errors which could affect the BLM’s ability to collect the LC.	
	4f	If the above provisions are not included, inform the LC applicant (bond principal/obligor, operator) by decision. <i>The LC must be returned by decision to the issuing financial institution. Send a copy to the advising bank, if applicable, by courier service or registered mail in accordance with instructions given in the LC (see Illustration 4-3).</i>	LC UNACCEPTABLE
		The financial institution will change or amend an LC only upon orders from the LC applicant. It is important the BLM not accept an LC in need of correction or changes.	
	5	The current bond contract (Form 3809-2) must be completed and accompany all personal bonds. If the LC is in order, proceed to Subsection F, below, to adjudicate the accompanying personal bond form.	LC UNACCEPTABLE
		The bond is accepted with an effective date being the date a satisfactory bond and a satisfactory financial instrument are received in the proper BLM office. If the bond and financial instrument were received on separate days, the effective date for bond acceptance would be the later date of receipt of the two instruments.	EFFECTIVE DATE

Responsible Official	Step	Action	Keywords
	6	If the bond is determined to be unacceptable, return the bond to the principal by decision indicating defects. Retain the LC pending return of a corrected bond.	UNACCEPTABLE BOND
BSS Entry	7	Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2960 AC 470; Action Remarks: Reason for unacceptability.	AUTOMATED NOTATION
Adjudication	8	If bond is acceptable, prepare decision accepting bond (see Illustration 4-4), effective as of the later of the following dates:	ACCEPTABLE BOND AND LC
	8a	Date properly executed bond was received in proper BLM office; or	
	8b	Date LC was received with correct terms and format.	
	9	After signed, distribute as follows:	
	9a	Original of decision to the obligor and to the financial institution(s).	
	9b	Copy of decision to appropriate FO solid minerals operations staff, all FOs if statewide bond, all SOs by electronic announcement to the BLM Bond Surety Group (BLM_Bond_Surety@blm.gov) if nationwide bond, and other surface management agencies, as appropriate.	
BSS Entry	10	Enter Action Date: Date of decision showing bond accepted; DE 2960 AC 469; Action Remarks: Enter effective date of bond.	AUTOMATED NOTATION
CRS Entry	10b	Enter DE 2910 AC 909; Action Remarks: Enter effective date of bond. Enter DE 2910 AC 460; Action Remarks: Amount Obligated.	

Responsible Official	Step	Action	Keywords
Adjudication	11	File bond, acceptance decision, copy of LC and other documents securely in the bond file.	
	12	If timely notice is received from the financial institution that it will not renew the LC, contact the FO to provide the SO a written statement as to the continuing need for bond coverage. If bond coverage continues to be needed, i.e., operations or reclamation has not yet been completed, notify the obligor and financial institution(s) by decision that replacement bond security is required on or before 30 days prior to the nonrenewal date, else the proceeds under the LC will be collected by the BLM to guarantee continued bond coverage (see Illustration 4-5).	BANK NOTICE OF NONRENEWAL
	13	If no replacement bond security is provided by the date specified, prepare a decision to the obligor and bank (see Illustration 4-6), demanding payment of the LC.	PAYMENT OF LC DEMANDED
		The terms of the standard LC state that the BLM will present a draft for payment of the LC. Prepare the payment draft on BLM letterhead (see Illustration 4-7). Contact the financial institution with a draft of the payment draft to obtain any additional language required in the payment draft. Fax payment draft and demand decision to the bank and follow with a hard copy. Send copy of draft and decision to accounts to advise of pending deposit.	
Accounts	14	When notified of the deposit of the LC proceeds, prepare CBS receipt for a cash bond. Place funds in unearned account. Forward the deposit information from the bank to Adjudication.	PAYMENT OF LC RECEIVED

Responsible Official	Step	Action	Keywords
BSS Entry	15	Change the type of financial instrument in BSS from LC to cash. Enter DE 2960 AC 486, Pmt (Payment) By Surety/Principal.	
Adjudication	16	If the BLM receives an amendment extending the LC close to the expiration date of the LC, the demand for payment must be rescinded by a decision and faxed to the financial institution holding the expiring LC, with a hard copy following (see Illustration 4-8).	REPLACEMENT OF LC TIMELY RECEIVED
	16a	If the BLM receives a replacement financial instrument for an expired LC, with the current bond, adjudicate and take action to accept, obtain correction or reject the financial instrument.	REPLACEMENT FINANCIAL INSTRUMENT RECEIVED
	16b	If the BLM receives a new bond with a new financial instrument, adjudicate and take action to accept, obtain correction or reject. If accepted, terminate the period of liability under the bond secured by the expired LC. If rejected, make sure the LC is demanded prior to the expiration date.	REPLACEMENT FINANCIAL GUARANTEE (BOND) RECEIVED
BSS Entry	17	If a new bond is accepted, close the bond secured by the LC and enter the new bond in BSS. If a new financial instrument is accepted to replace the LC, change the document type in BSS. Follow the guidance in Chapter III of this handbook and the guidance in the BSS User Guide for surety bond entry.	AUTOMATED NOTATION

D. Certificates of Deposit and Other Time Deposit Accounts

A time deposit, including a Certificate of Deposit (CD), is a financial instrument issued by a bank or other financial institution specifying that a certain amount of money has been deposited with the bank in an interest bearing account for a specified period of time. Time deposits are fixed, not liquid, accounts. Withdrawals or deposits are not allowed on a time deposit without incurring a penalty. At maturity, funds in the time deposit account may be withdrawn or reinvested.

Originally, a CD was a bearer (negotiable) instrument issued by a bank to verify money deposited in the bank for a specified amount of time at a specified interest rate. Some banks still issue a negotiable certificate; however, many banks now issue a “book-entry certificate of deposit.” A “book-entry” CD is a computerized “receipt” which may not be negotiable, but may be an acceptable financial instrument (see below).

Recently, some banks have established time deposit accounts for savings accounts. However, most banks view savings accounts as strictly liquid accounts and will not establish savings accounts as time deposit accounts. Time deposit accounts are not passbook accounts; passbook accounts are liquid and not acceptable to secure a bond. The new savings deposit accounts, called money market accounts by some banks, are generally issued for a lesser amount of money and typically earn a lesser amount of interest than a CD. Different financial institutions, and various branches of the same financial institution, issue different accounts and have different names for time deposit accounts. If you have questions, or are uncertain that the account is not liquid, or whether the BLM has sole redemption rights, speak directly to a representative from the bank issuing the financial instrument. The financial instrument the BLM receives will be titled as to the type of account the document represents.

Some banks will not issue a CD that satisfies the BLM’s requirements and the party may need to obtain a CD from another bank. Assignment of a CD may be necessary if the CD is a bearer instrument and will be paid only to the entity presenting it for payment. The CD must be in the BLM’s possession before acceptance of the bond. If necessary, an assignment drawn by the financial institution may clarify the BLM’s requirements and alleviate the titling problems.

Several items on a CD and other time deposit accounts are Class III privacy information, and are not to be disclosed to any party except the financial institution that issued the CD and the party that opened the CD. This information is based on financial institution disclosure allowed for a credit report or rating. The BLM must not disclose the private information.

PRIVATE	PUBLIC
Account number (given on time deposits)	Interest Rate
Account balance	Opening Amount
Social security number	Opening Date
Address of person establishing the account	Terms of deposit
Name of person establishing the account	Number of deposits issued to same person

The private information **may not be shared over the telephone or in decisions or letters with anyone other than the bank or the party that obtained the CD, including the operator and the bond principal (if different than the account holder), the BLM FO, the state, etc.** When a bond file, bond form, financial instrument, bond abstract, or bond report is to be viewed by the public or an unauthorized employee per a FOIA request, privacy information must be redacted by Adjudication prior to review. Affix Form 1273-2, Proprietary and Confidential Information, to the bond file whenever it is removed from the files (note that there is no similar form for

Privacy information). Issued decisions are public records and may be disclosed. Copies of decisions should always be sent to the BLM FOs.

CDs must be issued by a financial institution the deposits of which are insured by the FDIC and cannot exceed the maximum FDIC insurable amount. Credit unions must be insured by NCUA or Federal Savings and Loan associations.

**CD INSURED
BY FDIC OR
NCUA OR
FSLIC**

FDIC maintains a website to verify that a financial institution is insured by FDIC, <http://www.fdic.gov/bank/index.html>. Select the option for “Deposit Insurance” and then the option “Bank Find” and follow the instructions through the screens. When verifying a branch bank, if the financial institution is insured, then the deposit branch office is insured, according to FDIC.

**FDIC
VERIFICATION**

Insured credit unions can be verified at <http://www.ncua.gov>. If you cannot locate the financial institution on the FDIC or NCUA site, call the bank and ask for written FDIC verification. The FDIC site also issues alerts as to unauthorized banks conducting business as well as stolen and counterfeit bank checks and money orders in circulation.

**NCUA
VERIFICATION**

For example, FDIC provides \$100,000 insurance for each entity holding accounts with it. The maximum applies to the total of all accounts located at one financial institution under one account holder’s name. Therefore, if an entity wishes to submit a personal bond secured by a CD for more than \$100,000, for example, \$180,000, the BLM must not accept it in the form of a single CD, but rather is to require the entity obtain two or more CDs totaling \$180,000 from unrelated, separately chartered financial institutions. The amount of the CDs may be split in any manner the obligor wishes, as long as all of the obligor’s personal accounts at each separately-chartered institution total no more than \$100,000. The BLM must always be able to collect the entire \$180,000 if it is necessary to do so.

**FDIC
MAXIMUM
LIMIT**

Because of increasing automation in the banking industry, an alternate document such as safekeeping receipt, time deposit, investment certificate, etc. may be submitted rather than an original, negotiable “certificate.” If a review of this document, known as a “book entry certificate of deposit,” in accordance with the procedures below shows the financial instrument conforms to the criteria for CDs, is not liquid, and that the BLM has sole redemption rights, the financial instrument may be accepted. Anyone seeking to secure a BLM bond through a book-entry CD issued by a financial institution might save time by having the appropriate BLM office (where the bond will be filed, adjudicated, and maintained) pre-approve the terms and conditions the financial institution places on such instruments.

**BOOK-ENTRY
CDs**

A decision accepting a CD must clearly inform the bank and the bond obligor of the specific BLM office having authority to release the funds under the CD, i.e., the SO.

CDs **cannot** be used as a pledge or security for any loan or other obligation. It must be clear that the deposit is pledged to the BLM for the sole and exclusive use of the Department of the Interior, Bureau of Land Management. The financial institution must agree to not use the deposit to off-set any monetary default of the obligor or any other party. If necessary, obtain proof from the financial institution that the depository account has been pledged to the BLM and the bank relinquishes any right to set-off.

In response to informal contacts with a party wishing to obtain a CD to secure a personal bond, provide instructions regarding acceptable CDs or other time deposit accounts issued by a bank, savings and loan, or credit union whose deposits are federally insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Association (NCUA), or the Federal Savings and Loan Insurance Corporation (FSLIC). Notify the party that the CD should be at least the amount required for the bond per the BLM requirements, and that a CD from more than one financial institution may be required if the bond estimate is more than the FDIC insured limit of deposit, or if the total of all the party's accounts located at one financial institution under one account holder's name will be greater than the FDIC insured limit of deposit.

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive and date/time stamp bond contract (Form 3809-2) and CD and hand carry to Adjudication. If the CDs are kept in a safe in the Accounting Section, a copy of the CD should be made and the original CD placed in a fireproof, locked safe. If the CD is kept in a secured area in Adjudication, then the original CD will be given to Adjudication.	
Adjudication	2	A CD may be a negotiable instrument and must be securely guarded at all times. Copy the CD, clearly mark as a “copy,” and place original in safekeeping immediately. The CD copy should be kept in the bond file with the bond. For consistency, treat all CDs, time deposits, etc. as negotiable.	SAFEGUARD CD LOCKED IN SAFE

Responsible Official	Step	Action	Keywords
BSS Entry	3	<p>Enter bond abstract into the BSS according to the procedures in the current BSS User Guide. Enter Action Date: Date Bond Filed; DE 2960 AC 468, pending entity required.</p> <p>Recommended: Obtain a NID for the issuing bank of a CD and enter into BSS. Entry of the financial institution in BSS will assist Adjudication in identifying and notifying affected parties of the instruments accepted by the BLM when banks merge, liquidate, etc.</p>	AUTOMATED ENTRY
Adjudication	4	<p>Review CD for the following:</p>	
	4a	<p>The deposits of the financial institution issuing the CD must be insured. If this is not indicated on the CD, check the FDIC web site at https://www.fdic.gov/bank/index.html for verification of FDIC coverage.</p> <p>Click on “Deposit Insurance” and then “Bank Find” and follow the instructions. Type in the name of the bank and, if the bank is FDIC insured, the site will return information as to when it was FDIC insured, the primary regulator, and how to obtain information on branch offices. The branches of an insured bank are also insured.</p> <p>If FDIC coverage cannot be verified by the CD or at the website, call the bank and ask bank personnel to send or fax verification the bank is FDIC insured. If the bank is not FDIC insured, return the CD as unacceptable for that reason.</p>	FDIC INSURED FINANCIAL INSTITUTION
		<p>Verify credit union insurance at its website: http://www.ncua.gov.</p>	CREDIT UNION
	4b	<p>The CD must explicitly indicate on its face that “The Secretary of the Department of the Interior or his duly authorized representative</p>	REDEMPTION RESTRICTION

Responsible Official	Step	Action	Keywords
		bank, send a copy of the document, your state's applicable policies, and a statement of your concerns to the Solicitor's Office for an opinion of the financial instrument satisfying the requirements to secure bonding under 43 CFR 3802/3809.	
	4d	If an entity submits a CD containing terms of the bank's right to off-set, send Illustration 4-11, 4-11, Agreement Not To Off-Set, to the bank for completion by the bank and signature by a representative of the bank.	AGREEMENT NOT TO OFF-SET
	4e	Even if the CD states that it may not be redeemed prior to maturity, most banks allow immediate redemption, but charge a penalty, i.e., loss of interest. If the CD contains such information, informally contact the bank to verify that the CD is immediately redeemable by the BLM only and document the bond file with a record of the conversation.	EARLY REDEMPTION PROVISIONS
	4f	Penalties for early redemption will be paid out of the obligor's interest earned not out of the principal amount of the CD. Since the financial institution has the Tax ID number for payment of the interest to the obligor, they (the banks, etc.) have stated that they would not reduce the principal amount due the BLM at the time of payment. Instead, any penalty for early redemption would be taken from the interest due and payable to the obligor. If the CD contains language to the contrary, the amount of the CD must be increased to include any early redemption penalties or obtain a letter from the obligor stating they will pay any penalties for early redemption.	OBLIGOR BEARS PENALTIES FOR EARLY REDEMPTION
	4g	There should be no expiration date for the CD that would restrict the right of the BLM to collect the principal amount at any time in case of default.	EXPIRATION DATE

Responsible Official	Step	Action	Keywords
	4h	The CD can be issued for any term the obligor wishes but must be automatically renewable.	AUTOMATIC RENEWAL
	4i	If the CD is not acceptable, inform obligor by decision. <i>Return CD with copy of decision to bank by courier service or registered mail (see Illustration 4-12).</i>	UNACCEPTABLE CERTIFICATE OF DEPOSIT
	4j	Route for automated entry.	
BSS Entry	5	Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2960 AC 470; Action Remarks: Reason for Non-acceptance.	AUTOMATED NOTATION
Adjudication	6	The current bond contract (Form 3809-2) must be completed and accompany all financial instruments. If the CD is in order, proceed to Step F, below, to adjudicate the accompanying personal bond form.	ACCEPTABLE CERTIFICATE OF DEPOSIT
	7	If the bond is determined to be unacceptable, return bond to principal by decision indicating defects. Retain the CD pending return of a corrected bond.	UNACCEPTABLE BOND
	8	If the CD and bond are acceptable, prepare decision accepting CD and bond (see Illustration 4-13).	ACCEPTABLE CD AND BOND
		The bond is accepted with an effective date being the date a satisfactory bond and a satisfactory financial instrument are received in the proper BLM office. If the bond and financial instrument were received on separate days, the effective date for bond acceptance would be the later date of receipt of the two instruments.	EFFECTIVE DATE

Responsible Official	Step	Action	Keywords
	9	<p>After decision is signed, distribute as follows:</p> <ul style="list-style-type: none"> (a) Original of decision to obligor (b) Original of decision to financial institution (c) Copy of decision to appropriate FO (d) Copy of decision to the state or other surface management agencies, as appropriate (e) Route for automated entry 	
BSS Entry	10	Enter Action Date: Date Bond Accepted; DE 2960 AC 469.	AUTOMATED NOTATION
CRS Entry		Enter DE2910 AC 909; Action Remarks: Enter effective date of bond. Enter DE 2910 AC 460; Action Remarks: Amount Obligated.	
Adjudication	11	<p>If the CD is replaced by another type of financial security, adjudicate the new instrument, with a new bond if necessary, and accept as a replacement for the personal bond (see Illustration 4-9).</p> <p>If the obligor submits a satisfactory surety bond as a replacement, terminate the period of liability under the personal bond, and return the CD to the financial institution. See Illustration 11-4 for terminating the period of liability of a personal bond secured by a CD.</p>	REPLACEMENT SURETY BOND
BSS Entry	12	Change BSS to reflect the new instrument or bond accepted as the replacement. Enter a new bond in BSS if needed.	AUTOMATED NOTATION
	13	When the CD is no longer needed because the requirement for bonding has ceased, terminate the period of liability under the personal bond, and return the CD to the financial institution or to the obligor as directed by the obligor (in the case of CD not maturing in the near future). See Illustration 11-4 for terminating the period of liability of	

Responsible Official	Step	Action	Keywords
		a personal bond secured by a CD.	
	14	Upon default of the operator, the CD may be presented to the bank for collection. Include a copy of the bond and the original acceptance decision. See Illustration 4-14.	COLLECTION OF CD

Several items on a CD and other time deposit accounts are Class III privacy information, and are not to be disclosed to any party except the financial institution that issued the CD and the party that opened the CD. This information is based on financial institution disclosure allowed for a credit report or rating. The BLM must not disclose the private information.

PRIVATE

- Account number (given on time deposits)
- Account balance
- Social security number
- Address of person establishing the account
- Name of person establishing the account

PUBLIC

- Interest Rate
- Opening Amount
- Opening Date
- Terms of deposit
- Number of deposits issued to same person

The private information **may not be shared over the telephone, in decisions, or letters with anyone other than the bank or the party that obtained the CD, including the operator (if different than the account holder), the BLM FO, the state, etc.**

When a bond file, bond form, financial instrument, bond abstract, or bond report is to be viewed by the public or an unauthorized employee per a FOIA request, privacy information must be redacted by Adjudication prior to review. Affix Form 1273-2, Proprietary and Confidential Information, to the bond file whenever it is removed from the files (note that there is no similar form for Privacy information). Issued decisions are public records and may be disclosed. Copies of decisions should always be sent to the BLM FOs.

E. Negotiable U.S. Treasury Securities

Negotiable Treasury Securities, e.g., bills, notes, or bonds issued by the U.S. Department of the Treasury may be used as collateral for all programs in the BLM, including operations conducted under 43 CFR 3802 and 3809.

The Negotiable Securities Program is managed by the National Operations Center through the Federal Reserve Bank. Securities are purchased by the obligor through their financial institution or brokerage firm. Once purchased, Negotiable Securities are delivered to the Federal Reserve Bank for safe-keeping. No additional records are maintained by the financial institutions. Since these securities are delivered to the Federal Reserve Bank, financial institutions are not required to include them in their financial records.

Treasury bills are short-term obligations issued with a term of 1 year or less. They are sold at a discount from face value (par) and do not pay interest before maturity. The difference between the purchase price of the bill and the amount that is paid at maturity (par), or when the bill is sold prior to maturity, is the interest earned on the bill. Treasury notes have a term of at least 1 year, but not more than 10 years. Treasury bonds have a term of more than 10 years. Treasury notes and bonds bear a stated interest rate, and the owner receives semi-annual interest payments directly from the Federal Reserve Bank.

Treasury securities cannot be redeemed before maturity or they incur a penalty. Some Treasury bonds issued before 1985 are subject to call by the Treasury Department before their final maturity. If called, these bonds stop earning interest on the date called. The details of each security issued are announced before the Treasury’s auction.

Further information concerning U.S. Treasury bills, notes, and bonds may be obtained from a brochure published by the U.S. Department of the Treasury, Bureau of the Public Debt. See 31 CFR part 225 (http://www.fms.treas.gov/collateral/sb_regulations.html) for additional information about Treasury securities pledged for bonds to fulfill financial guarantee requirements of the Federal government. (Note: the regulations at 31 CFR part 225 replace Treasury Circular 154).

The BLM bond official (adjudication) works closely with the BLM National Operations Center Negotiable Securities Manager, when a bond is to be secured by a Treasury security. The bond official determines the sufficiency of the bond instrument, assures obligations under the bond are properly assigned, assures that the Treasury security and bond are written in accordance with the regulations, and authorizes release of the collateral. The BLM National Operations Center Negotiable Securities Manager oversees the acceptance, transfer and return of Treasury securities, limits the risk of the government obligations, and advises and takes instructions from the bond official to ensure the best interest of the BLM.

If a Treasury bill is submitted to secure a personal bond, the amount purchased cannot be less than the full bond amount required. If it comes to the BLM’s attention that an obligor has purchased a Treasury security at a discount such that there is a difference between the amount that was paid and the face amount or par value of the security, the BLM must require that the security be supplemented to equal the full amount of the bond. For example, the obligor MAY submit a cash bond (e.g., cashier’s check or certified check) to make up the difference. Verification of the full amount may be accomplished by reviewing the customer confirmation form sent to the BLM.

The following procedures are for pledging Treasury Securities to the BLM for the purposes of securing a personal bond.

Responsible Official	Step	Action	Keywords
Adjudication	1	Receive oral or written inquiry from operator or other potential principal regarding the filing of	PROVIDE INFORMATION

Responsible Official	Step	Action	Keywords
		a personal bond secured by negotiable Treasury securities. Provide, send by email, US mail, fax, or by directing the entity to the appropriate website, information on obtaining negotiable Treasury securities (see Illustration 4-14, pages 1-3).	ABOUT TREASURE SECURITIES
Adjudication	2	<p>Give the operator or other potential principal the following information:</p> <p>2a The entity must contact a financial institution to authorize the purchase of a Treasury security in the name of the party needing the bond coverage.</p> <p>2b The Treasury security purchased will be electronically held under the BLM’s American Bankers Association (ABA) number with the Federal Reserve Bank (FRB), and managed by the BLM National Operations Center, Negotiable Securities Manager.</p> <p>2c Assignment of the Treasury security or assignment of the deposit thereof is not acceptable.</p> <p>2d Direct questions from the entity about the BLM procedures to the Negotiable Securities Manager at the BLM National Operations Center. Provide the entity with the name of the Negotiable Securities contact person, if possible. In addition, if the obligor’s financial institution has any questions, they may also contact the BLM National Operations Center.</p> <p>NOTE: The FRB must be notified by the BLM National Operations Center prior to the actual wire transfer of the transaction. The FRB will not accept the wire transfer directly from the entity’s financial institution without advisement from the BLM.</p>	

Responsible Official	Step	Action	Keywords
	3	Inform the operator or other potential principal that the current BLM bond contract (Form 3809-2) <u>must be completed</u> and submitted to the appropriate BLM office to authorize the Secretary of the Interior to use the funds in the event of default. After the obligor acquires a Treasury security through a depository institution, the obligor or the obligor’s financial institution must contact the BLM office having responsibility for the bond, and provide the following information.	BLM BOND FORM REQUIRED
Adjudication	3a	Name, address, and phone number of obligor.	INFORMATION REQUIRED FROM OBLIGOR
	3b	The BLM serial number of the operations involved (or a statement that the bond is for statewide or nationwide coverage).	
	3c	The name, mailing address, ABA Number and account number of the obligor’s bank where interest payments should be transferred, along with the name and telephone number of a bank contact person, if possible.	
	3d	The type of Treasury security (bill, bond, or note) purchased.	
	3e	The par amount (face value) of the security, the interest rate, and the maturity date of the security.	

NOTE: The current value of the Treasury security deposit must be at least the bond amount required by the AO. A discounted value less than this amount is not acceptable. If a Treasury bill, purchased at a discount, is submitted for less than the required bond amount, the bonded party must make up the difference, otherwise the bond will be returned as unacceptable. The principal may submit a certified check or cashier’s check in the amount of the deficiency, with a second bond form, to

Responsible Official	Step	Action	Keywords
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bring the bond up to the required amount.

EXAMPLE: The obligor (principal) purchases a \$25,000 Treasury bill. After purchase and with discount, the bill’s face value is \$23,964. Only when the bill matures, will it have a face value of \$25,000. Therefore the obligor must furnish an additional \$1,036 to bring the total bond amount up to the required \$25,000 before the BLM can accept the bond. When the Treasury bill matures, there will be \$26,036 in proceeds (face value plus interest). Alternatively, the obligor may decide to purchase a Treasury security in a larger amount, where after purchase and with discount, par is \$25,000.

3f	Committee on Uniform Securities Identification Program (CUSIP) number of the security.
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3g	The depository bank’s nine-digit ABA number.
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3h	The name of the FRB branch servicing the depository financial institution.
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3i	The name and address of the entity to whom interest is payable, and that entity’s Social Security Number (SSN) or Tax Identification Number (TIN).
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NOTE: The FRB is required under the Tax Equity and Fiscal Responsibility Act of 1982 (26 U.S.C. 6049) to report the recipient’s name, address, Tax Identification Number, Social Security Number, and amount of interest to the Internal Revenue Service. If the BLM becomes aware of an address change for the entity, Adjudication must notify the National Operations Center which, in turn, will notify the FRB of the entity’s most current address.

4	Upon the BLM’s receipt of the Treasury authorization having been made by the operator
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**SEND
CONFIRMATION**

Responsible Official	Step	Action	Keywords
		<p>(information in IV.E.3, above), email or fax a copy of that information to the Negotiable Securities Manager, National Operations Center. If your office requires a formal memo to the BLM National Operations Center, see Illustration 4-16.</p> <p>NOTE: It is important that the obligor’s financial institution or correspondent depository financial institution NOT transfer the Treasury security to the Federal Reserve Bank until authorization is given by the BLM Negotiable Securities Manager.</p>	<p>OF TREASURY AUTHORIZATION TO NATIONAL OPERATIONS CENTER</p> <p>TRANSFER MUST BE AUTHORIZED FIRST BY THE NATIONAL OPERATIONS CENTER</p>
Adjudication	5	<p>The Negotiable Securities Manager will contact both the servicing FRB or the FRB branch and the obligor’s financial institution or correspondent depository financial institution to authorize the transfer of the Treasury security to the Federal Reserve Bank.</p>	
	6	<p>When the security is transferred to the Federal Reserve Bank, the financial institution will include the following information in the electronic transfer message: “Security pledged to the DOI-Bureau of Land Management (name of SO) by (name of obligor) for (BLM serial number, statewide bond) for (name of state) or nationwide bond.”</p> <p>The following are examples of an acceptable transfer message:</p> <p>“Security is pledged to DOI-Bureau of Land Management, Nevada SO, by XYZ Corp for BLM serial number NVN-123456” or “Security is pledged to DOI-Bureau of Land Management, Idaho SO, by XYZ Corp. for statewide bond of operations conducted under 43 CFR 3809 in the State of Idaho.”</p>	<p>ELECTRONIC TRANSFER MESSAGE</p>
	7	<p>The obligor is to send the following to the BLM SO as soon as possible:</p>	

Responsible Official	Step	Action	Keywords
	7a	A properly completed, executed, and notarized personal bond (Form 3809-2).	
	7b	A copy of the “Acknowledgment of Book-Deposit, Release of Account Transfer,” that the FRB will send to the obligor’s financial institution or correspondent depository financial institution. This “acknowledgment” will constitute proof that the security is being held by the FRB.	
	7c	The transaction document from the obligor’s financial institution to verify the amount the obligor paid for the Treasury security that, excluding any commission fee and accrued interest, must equal or exceed the regulatory bonding requirement amount.	
Receiving Official	8	Receive and date/time stamp all documents and forward to Adjudication, with the bond file, if that is applicable in your office.	
BSS Entry	9	Enter the bond information and Treasury security into BSS according to the BSS User Guide.	AUTOMATED NOTATION
	9a	Enter Action Date: Date Bond Filed. DE 2960 AC 468; under Document ID, enter the type and CUSIP number of the Treasury negotiable security. Pending action required.	
	9b	RECOMMENDED: Obtain a NID(s) for the issuing and advising bank, if applicable, and enter interest relationship into BSS.	
Adjudication	10	If the Treasury security is in order, proceed to Subheading F, below, to adjudicate the accompanying personal bond form and verify appropriate blanks are properly completed, the dollar amount is sufficient and properly spelled out, and the relationship of the party signing for the obligor is clear. Contact obligor to furnish	REVIEW BOND

Responsible Official	Step	Action	Keywords
		any missing or additional information needed.	
	11	When bond and Treasury security are in order, prepare acceptance decision. The BLM office must send a copy of the bond acceptance decision and the “Acknowledgment of Book-Entry Deposit, Release of Account Transfer,” to the Negotiable Securities Manager. Accept the bond by decision (see Illustration 4-17). The date the Treasury security is deposited with the Federal Reserve Bank or the date the bond is filed in the proper BLM office, the later date, is the effective date of bond acceptance.	ACCEPTABLE BOND
	12	Distribute the original of decision to obligor, with a copy to the Negotiable Securities Manager (OC 621), the FO, and copy to the bond file.	
BSS Entry	13	Enter Action Date: Date Bond Accepted; DE 2960 AC 469; General Remarks: Maturity date of negotiable Treasury security.	AUTOMATED NOTATION
Adjudication	14	The Negotiable Securities Manager will notify the BLM office of a maturing Treasury security usually 60 days before the maturity date. Adjudication will contact FO or other BLM personnel having responsibility for the surface compliance for a determination as to a continuing need for bond coverage. If continuing bond coverage is required after the maturity date, the BLM Adjudication office will inform NOC of continuing bond coverage and authorize the NOC to reinvest the security (see Illustration 4-18).	MATURING SECURITY
	15	If a Treasury security is no longer required prior to maturity, the BLM office must notify the Negotiable Securities Manager by memorandum stating such information. The Negotiable Securities Manager will direct FRB to electronically transfer the security out of the FRB to obligor’s bank.	TREASURY SECURITY NO LONGER REQUIRED

Responsible Official	Step	Action	Keywords
	16	If a satisfactory bond has been accepted prior to or after the maturity date (if still pledged to the BLM) of any Treasury-negotiable security, advise the Negotiable Securities Manager (OC-621) by memorandum to direct the FRB to transfer the negotiable security proceeds from the FRB to the obligor's bank (see Illustration 4-19).	TREASURY SECURITY REPLACED
	17	If the Treasury security is replaced by another type of financial pledge, adjudicate the new instrument, with a new bond if necessary, and accept as a replacement pledge for the personal bond (see Illustration 4-9). If the obligor submits a satisfactory surety bond as a replacement, terminate the period of liability under the personal bond and authorize return of the Treasury security as described in Step 15 above. See Illustration 11-4 for terminating the period of liability of a bond.	REPLACEMENT SURETY BOND
BSS Entry	18	Change BSS to reflect the new instrument or bond accepted as the replacement. Enter a new bond in BSS as needed if the personal bond is replaced with a satisfactory surety bond.	AUTOMATED NOTATION
	19	If the bond is no longer needed, the funds will be transferred to the obligor after receipt of clearance reports from all affected BLM offices and surface management agencies, if other than the BLM, that all obligations on the operations have been met (see Chapter XI, "Termination of the Period of Liability").	BONDING NO LONGER REQUIRED
	20	When the Treasury security is no longer needed because the requirement for bonding has ceased, terminate the period of liability under the personal bond and authorize return of the Treasury security as described in Step 15 above. See Illustration 11-5 for terminating the period of liability of a personal bond.	

Responsible Official	Step	Action	Keywords
	21	If an operator with a bond secured by a negotiable Treasury security is in default, notify the Negotiable Securities Manager (OC 621), by memorandum, of the nature of the default and request that the Treasury security be sold to obtain the funds needed to cover the default. The Negotiable Securities Manager (OC 621) will coordinate sale of the security with the FRB. After the sale, the NOC will transfer the proceeds to the appropriate BLM office’s suspense account.	DEFAULT PROCEDURES
BSS Entry	22	Update the BSS with AC 483.	AUTOMATED NOTATION

F. Adjudicating the Personal Bond Contract

A personal bond form is required to accompany any financial instrument or security other than a surety bond. The bond form contains a power of attorney to the Secretary of the Interior over the funds pledged for the bond. The bond form contains other contractual terms and conditions which must be adhered to by the principal to effect termination of the bond period of liability following satisfactory reclamation, as the bond form also requires the BLM to effect collection of the proceeds under the bond in the event of default of the principal.

The financial pledge for the bond may be returned to the principal or financial institution when the bond period of liability is terminated; however, the bond Form 3809-2 is retained as a BLM record with the 3809 case file according to the retention and disposal schedule. Currently, the 3809 case files are retained for 50 years at the national archives center following closure.

Receiving Official	1	Receive and date stamp bond. Forward to Adjudication.	
BSS Entry	2	Statewide/nationwide bonds must be promptly entered into the bond BSS, i.e., within 5 working days of the action involved. Especially in the case of nationwide bonds, failure to timely enter the bond information may cause the delay of approval actions in other BLM offices. Enter the bond into the BSS following the procedures established in the BSS User Guide. Enter Action Date: Date	AUTOMATED NOTATION

Responsible Official	Step	Action	Keywords
		Bond Filed; DE 2960 AC 468, pending action required.	
Adjudication	3	If not already received, obtain written notice as to the bond amount required for the proposed operations as determined by the FO or other responsible personnel as delegated in your state.	REQUIRED BOND AMOUNT
Adjudication	4	Examine bond for the following:	
	4a	Bond is the current acceptable contract Form 3809-2.	ACCEPTABLE BOND FORM
	4b	Bond is properly executed by principal, including principal's corporate seal (if required) affixed to the bond form. Bond must contain acknowledgment of principal's signature by a notary public. The relationship of the signatory to the principal is to be shown either on the bond itself or in an accompanying document.	EXECUTION BY PRINCIPAL NOTARIZED SIGNATURE SIGNATORY
	4c	Verify the bond principal is the operator as given in the Plan or Notice filed with the BLM. The operator should be the addressee on the bond determination, or similar letter/decision, sent by the BLM FO stipulating the conditions under which operational activities may begin.	PRINCIPAL AND OPERATOR
	4d	If the principal on the bond is not the operator, the BLM requires completion of Form 3809-4 or the operator must be designated a co-principal on the bond (Form 3809-4a). If the financial pledge for the bond is supplied by a party other than the operator or the bond principal, the BLM requires Form 3809-4a designating the supplier of the pledge.	BOND OR FINANCIAL INSTRUMENT PLEDGED BY OTHER THAN OPERATOR
	4e	If the bond is in the operator's name but the pledge for the bond is not, a rider must be obtained from the account holder naming the operator (bond principal) (Form 3809-4a).	FINANCIAL PLEDGE NOT FROM OPERATOR/ PRINCIPAL CO-

Responsible Official	Step	Action	Keywords
		<p>If the party supplying the bond or the financial pledge chooses, they may complete a rider stating the operator and the party supplying the bond and/or financial pledge are co-principals under the bond. Each co-principal must be named on the bond and there must be a <u>separate signature for each co-principal even if the same individual is signing for all co-principals.</u></p>	<p>PRINCIPALS ON BOND</p>
<p>Adjudication</p>	<p>4f</p>	<p>Check that the principal is indicated in the proper location on the bond.</p>	
	<p>4g</p>	<p>Bond is at least for the amount required by the correspondence received from the FO. Check that bond amount is properly indicated on form. The dollar amount must be spelled out by the bond principal, i.e., Two Million Four Hundred Thousand and no/100 Dollars. A bond with only numerical figures indicated (\$2,400,000) must be returned for correction. A bond with only the numerical figures missing may be accepted if the correct amount is spelled out clearly.</p>	<p>AMOUNT OF BOND</p>
	<p>4h</p>	<p>Bond coverage should be indicated as to whether the bond provides coverage for an individual, statewide, or coverage of operations nationwide.</p>	<p>BOND COVERAGE</p>
		<p>(1) If no indication is given on the bond form as to the coverage, informal contact may be made to determine the coverage intended and then the bond may be corrected by Adjudication. Adjudication should note the bond with the contact information, initial, and date. Provide the principal with copy of the corrected bond along with the decision of acceptance of the bond.</p> <p>(2) If more than one type of coverage is indicated, the bond is not acceptable and may be corrected by phone call, fax, or is to be returned to the principal for correction.</p>	<p>FAILURE TO INDICATE COVERAGE</p> <p>MULTIPLE COVERAGES INDICATED</p>

Responsible Official	Step	Action	Keywords
	4i	If bond is an individual bond and the BLM serial number is missing or incorrect on the bond form, Adjudication will verify the serial number and fill in or correct it. Furnish a copy of the corrected bond to the surety and principal with the decision of acceptance of the bond.	BLM SERIAL NUMBER ON INDIVIDUAL BOND
Adjudication	4j	If bond is a statewide bond and the geographic state shown on the bond is not under the jurisdiction of the BLM office receiving the bond, forward the bond to the proper BLM office by memorandum with a copy sent to the principal.	FILED IN WRONG BLM OFFICE
NOTE: A nationwide bond may be filed in any BLM SO. A rider to a nationwide bond may be filed in either the SO that accepted the original nationwide bond or in the SO having jurisdiction of the operations affected by the bond rider. Normally, however, riders are to be accepted by the SO maintaining the original bond unless immediate acceptance is necessary.			NATIONWIDE BOND FILING LOCATION
	4k	Check that execution date on bond is completed and precedes date of filing of bond. If execution date is not completed, return the bond to the principal for correction.	EXECUTION DATE COMPLETED
NOTE: Parties will sometimes attempt to file a bond to be effective at some future date. Postdated bonds are to be rejected and the parties advised that the bond may be executed with a provision that it will become effective at some certain later date, but that the execution date must precede the date of filing. This will most likely occur with a replacement bond.			EXECUTION DATE POSTDATED
	4l	The party executing the bond must have the lawful right to financially bind the bond principal. If the bond is executed by a party other than the bond principal, the signatory must indicate the capacity in which he is executing the bond for the principal. The signatory must be authorized to financially bind the principal.	BOND EXECUTION

Responsible Official	Step	Action	Keywords
		<p>(1) If the bond principal is an individual, the individual will execute the bond (example, Joseph H. Smith III, principal, and Joseph H. Smith III, executor).</p>	<p>INDIVIDUAL PRINCIPAL</p>
Adjudication		<p>(2) A bond with a corporate principal will be executed by a corporate officer having the power to financially bind the corporation such as the vice president, chief financial officer, or secretary-treasurer.</p> <p>(3) A bond in the name of a trust and signed by the trustee of the trust will require the BLM office reviewing the trust before the bond can be accepted. A trust is usually considered as a corporate entity but is also a function of state law and each trust is subject to the actual wording of the trust as to the powers of the trustee. Can the trustee financially bind the trust? Therefore, a copy of the portion of the trust that covers the trustee’s power to financially bind the trust is needed as well as the state law governing trusts in general. Assuming the trust and trustee meet these two tests, the BLM may accept a bond from a trust.</p> <p>(4) If a bond is executed by an agent, the agent will need to provide proof that the agent has power of attorney from the company (limited liability company, etc.) or the individual that gives the agent power to financially bind the company or individual on the bond.</p> <p>Additional information on business organizations may be found in the laws of the state where the BLM is adjudicating the bond as well as in Appendix C of this handbook.</p>	<p>CORPORATE PRINCIPAL</p> <p>TRUST AS PRINCIPAL</p> <p>POWER OF ATTORNEY NEEDED FOR AGENT</p>
	4m	<p>The operator’s TIN is required as part of the Notice-level operations or Plan of Operations filed with the BLM. The TIN may be shown on the bond form or in a separate document. The bond principal’s TIN or SSN must be shown in</p>	

Responsible Official	Step	Action	Keywords
		the space provided, if required on the bond in your BLM office. (If a SSN is given, it must be safeguarded the same as the privacy information reflected in bank accounts.) (See Section D of this Chapter and affix Form 1273-2 to the front of a bond file containing privacy information when the bond file is removed from the files.)	
Adjudication	4n	The bond must be notarized by a notary public. If the bond is signed in Canada, a notary public from Canada is acceptable.	
		NOTE: An operator or bond principal may give a Canadian address but the operator has to have a U.S. TIN, see 43 CFR 3809.301(b)(1) and .401(b)(1). That is the operator must be organized to do business in the U.S. If the operator only has a Canadian or other foreign country tax identification number, it is unacceptable and the entity must obtain a TIN from the U.S. Internal Revenue Service.	
	5	If bond is determined to be unacceptable, return bond to principal by decision indicating defects.	UNACCEPTABLE BOND
BSS Entry	6	Enter Action Date: Date of Decision Declaring Bond Unacceptable; DE 2960 AC 470; Action Remarks: Reason for unacceptability.	AUTOMATED NOTATION

Bonds are not effective until accepted by the BLM. Acceptance or rejection of a bond is achieved by a decision issued by the BLM. Operators cannot begin surface disturbing activities until a satisfactory bond is accepted by the BLM and subsequent Plan approval or permission to disturb the surface under Notice-level operations or a Plan of Operations is given to the operator by the Field Manager, or other delegated official (see BLM WO and State Manual Section 1203, Delegation of Authority).

Failure to file a satisfactory bond may be the basis for the BLM to take an action such as not approving a Plan or Notice, not allowing operations to begin or expand, or not recognizing a transfer of the operations. Since a bond is not effective until it is accepted by the United States, imposing

Responsible Official	Step	Action	Keywords
		a time limit for a bond to be submitted to the BLM is not appropriate.	
Adjudication	7	If bond is in order, prepare acceptance decision effective as of the <u>later</u> of the following dates:	ACCEPTABLE BOND
		If the bond and financial instrument are not received on the same date, the effective date for bond acceptance would be the later date of receipt of the two instruments.	EFFECTIVE DATE
	7a	Date bond was filed in the proper BLM office; or	
	7b	Date financial instrument was filed in the proper BLM office.	
	8	Forward decision to the BLM signing official for signature. After signature, send an original to the obligor and to the financial institution. Copies are sent to the FOs or other operations office, other surface management agencies, as appropriate.	
	9	Route for BSS Entry.	
BSS Entry	10	Enter Action Date: Date of decision showing bond accepted; DE 2960 AC 469; Action Remarks: Enter effective date of bond.	AUTOMATED NOTATION
Adjudication	11	File bond and acceptance in bond file.	

CHAPTER V – Adjudicating Bond Riders

A. General

A rider is a legal document that materially amends an existing individual, statewide, or nationwide bond. Material changes to a bond that would require a rider include reducing or increasing the amount of coverage provided by the bond, extending or limiting coverage (for example, from individual to nationwide or statewide to individual), providing the financial instrument by a third party, or adding co-principals.

Riders can accompany the original bond when it is filed or will be filed subsequent to the acceptance of the original bond in order to allow approval of some action, such as transfer of operators, or adding coverage for a modification or expansion of existing operations. The riders must be executed in the same manner as the original bond contract. Material changes to a surety bond without notice to or consent of the surety can lead to discharge of the surety and loss of the bond surety in conjunction with a transfer of operations. As with bonds, the processing of such riders must be handled promptly.

Form 3809-4a is a multipurpose rider and should be used for a personal bond. Most surety companies have rider forms (general or an all-purpose rider) that are acceptable to the BLM if the rider contains language satisfactory to the BLM and includes a power of attorney. If needed, however, Illustration 5-1 is a sample surety rider. Require completion of Form 3809-4, Form for Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal (Consent of Surety) Rider, when a personal or surety bond is posted by an entity other than the operator (third party).

B. Processing Bond Riders

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive bond rider; date stamp; forward to Adjudication. Or, route for automated entry followed by Adjudication.	
BSS Entry	2	Enter rider into the BSS. Enter Action Date: Date Rider Filed; DE 2960 AC 478 Action Remarks: Reason for Rider; pending action required.	AUTOMATED NOTATION
Adjudication	3	Check bond rider for the following:	
	3a	If the rider amends a surety bond, the rider <u>must</u> be executed by the principal and	EXECUTION PRINCIPAL/SURETY

Responsible Official	Step	Action	Keywords		
		surety in the same manner as required for the bond itself. If the rider only changes the name of the principal, the rider may be executed solely by the surety.			
Adjudication	3b	<p>Verify corporate seals.</p> <p>(1) Check that surety’s corporate seal is affixed, if a surety bond.</p> <p>(2) If state law of the BLM office accepting the bond requires corporations to have a corporate seal, verify that the corporate seal of the bond principal is affixed to the rider.</p>	CORPORATE SEALS		
	3c	<p>A rider to a surety bond must be accompanied by a properly executed POA (Illustration 3-3).</p>		POWER OF ATTORNEY	
	3d	<p>In most instances, when a rider is filed in an office other than the office maintaining the bond, forward the original rider by memorandum to the appropriate office for acceptance with a copy of the memorandum sent to principal and surety (Illustration 3-2).</p>			FORWARD RIDER FOR ACCEPTANCE TO OFFICE MAINTAINING BOND
	3e	<p>If a rider to a nationwide bond is filed in a SO having jurisdiction of the operations to be covered by the rider, but the nationwide bond is maintained in another SO, the rider may be accepted by the receiving SO if immediate acceptance of the rider is necessary.</p>			
		<p><i>Check with the SO maintaining the bond – no matter how urgently the operator wants approval.</i> The BLM must know that the bond is in good standing and the entities and operations covered by the bond are in compliance before accepting a rider to the bond. Close coordination is crucial between/among the SOs holding obligations under the nationwide bond.</p>			

Responsible Official	Step	Action	Keywords
Adjudication	3f	If a nationwide bond rider is accepted in a SO other than the SO where the bond is maintained, a copy of the decision accepting the rider, with the original rider attached, must be transmitted to the SO that maintains the bond. The SO maintaining the bond will input the action in the BSS.	FORWARD RIDER TO OFFICE MAINTAINING THE BOND
	3g	Check that execution date on the rider is completed and precedes the date of filing of rider. If date of execution is not completed, the rider must be returned to principal for correction.	EXECUTION DATE
<u>NOTE:</u> Often parties will attempt to file a rider to be effective at some future date. Postdated bonds and riders are to be rejected and the parties advised that bonds or riders <u>may be executed with provision that such will become effective at some certain later date, but that the execution date must precede the date of filing.</u>			POSTDATED BOND
Similarly, a bond may not be accepted by the BLM effective some past date as may be indicated by the surety and/or bond principal on the bond.			
A bond is effective the date it is received by the proper BLM office and is satisfactory for BLM’s acceptance.			
	3h	Access BSS to verify bond is still valid. Access the FMS website to verify that the surety is acceptable. If the surety is decertified, return the rider as unacceptable and request a new bond, either a personal bond or a bond from an acceptable surety.	ACCEPTABLE SURETY DECERTIFIED SURETY
	3i	If the rider increases the penal sum of bond, verify it does not exceed the underwriting limitation of the surety. If acceptance of the rider would result in a penal sum above the surety’s underwriting limitation, a reinsurance agreement (Standard Form 275) must accompany the rider. Adjudicate the reinsurance agreement and power of attorney per Chapter III. Return the rider as	UNDERWRITING LIMITATION EXCEEDED

Responsible Official	Step	Action	Keywords
		unacceptable if reinsurance is not provided.	
Adjudication	3j	Verify that the rider properly refers to the original bond by cross-referencing the bond number or by reciting the name of original bond principal and the date original bond was executed.	CROSS-REFERENCE TO ORIGINAL BOND
	4	If a rider to a personal bond is an increase in coverage, an additional financial instrument (certified funds, U.S. Treasury security, or time deposit) or an amendment to a letter of credit must also be submitted. Adjudicate the additional financial instrument according to the guidance in Chapter IV.	INCREASE IN THE BOND AND THE FINANCIAL PLEDGE
		If a personal bond is being reduced by the bond principal and a refund (cash) is to be made or an amendment to a letter of credit is received reducing the amount, an acceptable rider must also be filed corresponding to the reduced bond amount. The amount of a time deposit or a U.S. Treasury security cannot be reduced because of the fact that the amount and other terms of those instruments are fixed for a specified period of time.	DECREASE IN BOND AND THE FINANCIAL PLEDGE
	5	Determine whether the bond rider is inconsistent with any affected operations, required reclamation bond amount, or current surface management regulations.	
	6	Determine if acceptance of the rider is discretionary and is subject to review by the FO geologists/surface protection specialists/etc. For example, reduction of a statewide bond will not be approved unless all BLM officials approving operations in the state can report on the acceptability of such a reduction.	
	7	Signatures on bond riders.	

Responsible Official	Step	Action	Keywords
	7a	For a surety bond, follow procedures in Chapter IV.C.5, above, for adjudicating the POA.	POWER OF ATTORNEY
Adjudication	7b	For a personal bond rider, an acknowledgment of obligor’s signature is required.	NOTARY PUBLIC
	8	If bond rider is unacceptable, return by decision to principal or agent, via courier or certified mail, explaining the defects, why acceptance is denied, and include the IBLA appeal rights. Send decision to principal(s) and surety (c/o attorney-in-fact). Send a courtesy copy to the surety home office and any other office that may need to be informed of the action. Route for automated entry.	
BSS Entry	9	Enter action into BSS. Entry Action Date: Date of decision declaring rider unacceptable; DE 2960 AC 480; Action Remarks: Reason rider unacceptable. Enter Action Date: Date rider returned; DE 2960 81.	AUTOMATED NOTATION
Adjudication	10	If rider is resubmitted for acceptance, repeat prior steps.	
	11	If rider is acceptable, prepare decision (see Illustration 5-2), effective as of the later of the following dates:	ACCEPTABLE RIDER
	11a	Date rider was accepted by either the SO maintaining the bond or by the SO where operations are to be covered (if other than office maintaining the original bond).	
	11b	Effective date indicated on the bond rider.	

Responsible Official	Step	Action	Keywords
Adjudication	12	After the decision accepting rider is signed and dated, distribute originally signed copies to principal and surety, c/o attorney-in-fact (if surety bond, courtesy copies to surety home office, appropriate operations offices, and other affected parties). For nationwide bond, email other SO adjudicators in the BLM Bond Surety Group as appropriate. Route for BSS entry.	DISTRIBUTION OF DECISION
BSS Entry	13	Enter Action Date: Date Rider Accepted; DE 2960 AC 479; Action Remarks: Note reason for rider.	AUTOMATED NOTATION

CHAPTER VI – Bond Coverage for Transfers of Operations

A. Transfers of Operations

Close coordination between FO operations staff and SO Adjudication (or other offices as the delegation of authority in your state dictates) is essential for effective administration of bonds, particularly when transfers of operations are involved. The operations staff must not approve a change of operator or allow the new operator to conduct operations without the Adjudication staff having accepted satisfactory bond coverage to assure the operations and the disturbance are sufficiently guaranteed by a bond. While FO personnel (or others as designated in your state) are responsible for approving and/or supervising operations, SO Adjudication (or other as designated in your state) is responsible for all final actions on bonds, including requesting replacement bonds, accepting bonds, terminating the period of liability, and making a demand and collection against such bonds when default occurs.

Completion of Form 3809-5, Notification of Change of Operator and Assumption of Past Liability, will help the BLM offices document and process the transfer more efficiently. Both the operational and adjudicative personnel should have a copy. If it appears only Adjudication received Form 3809-5, send a copy to the appropriate FO. After the FO reviews the transferee's proposed operations and determines the estimated cost of reclamation for the transferee's proposed operations, Form 3809-5 may be signed by the Authorized Officer. The form is signed approving the transfer pending acceptance of satisfactory bonding before the transfer is complete. The signed Form 3809-5 is then copied to the SO as part of the documentation needed for adjudication of the transferee's bond.

If the proposed transferee is not bonded, the transferee will be advised by the BLM that bond coverage for the transferee will be required before the transfer will be approved.

Responsible Official	Step	Action	Keywords
Adjudication	1	<p>For any operations which have commenced, Adjudication will reconcile BSS Report, Serial Number/Bonds by Name, with the serial numbers given on Form 3809-5 when notified of a transfer of operations to another entity. The transfer may be recognized with a new satisfactory bond in the name of the transferee/new operator, a consent of surety, or a bond rider naming the transferee as a co-principal, all else being regular.</p> <p>All operations shown in BSS under a statewide or nationwide bond need to be accounted for under the existing bond.</p>	<p>BOND COVERAGE REQUIRED PRIOR TO NEW DISTURBANCE OR TRANSFER BEING RECOGNIZED</p>

Responsible Official	Step	Action	Keywords
		<p>Obtain a report from other SOs (nationwide bond) or the FOs (statewide bond) as to whether bond coverage continues to be required on the operations prior to requiring bond coverage from the transferee. (See Illustration 3-6.)</p>	
Adjudication	2	<p>Mergers and name changes may also change the name of the operator. However, this change occurs by operation of law. Form 3809-5 is not required for a name change or merger. See Section B of this Chapter for recognizing mergers and name changes.</p>	CORPORATE MERGERS AND NAME CHANGES
	3	<p>New Operator Bond</p> <p>The new operator (transferee) may furnish bond coverage for the operations. The transferee is required to provide a bond that will cover obligations under the plan of operations or notice to the same extent that the transferor's bond would have done.</p> <p>If all existing obligations are covered by a new bond, the period of liability under the prior bond may be terminated upon acceptance of the bond from the transferee (proposed new operator). The prior bond termination means that the exact date has been set beyond which no new cause of action by the previous operator may occur.</p> <p>The 3809 bond forms contain the appropriate language (assumption of outstanding liabilities), so that any and all obligations under the existing notices or approved plans, including applicable laws and regulations, are covered under the new bond. An assumption rider is not required to assume prior liabilities.</p>	NEW BOND FROM TRANSFEREE
	4	<p>Consent of Surety</p> <p>The principal on the bond that is covering the</p>	ASSUMPTION RIDER <u>NOT</u> REQUIRED
			SURETY FOR

Responsible Official	Step	Action	Keywords
		transferor may furnish a consent of surety, Form 3809-4, indicating the bond is posted on behalf of the transferee (the proposed operator). The bond principal and the transferee, and the surety if a surety bond, must execute the Form 3809-4. Include an extra signature page for the transferee.	BOND ON BEHALF OF TRANSFEREE
	5	Co-principal Form 3809-4a may be furnished by the bond principal naming the transferee as a co-principal on the bond which would then include liabilities for operations conducted by the transferee. All parties, even if the same individual is signing for multiple entities, must execute Form 3809-4a.	TRANSFEREE AS A CO-PRINCIPAL
Field Office	6	Until satisfactory bonding is accepted to cover the proposed operator, the BLM FO must ensure that the proposed operator conducts no activities on the mining operations and that the existing operator, and existing surety, continue to be liable for any and all surface reclamation on the operations, including maintenance of the site for the containment of fluids and other public health and safety issues. Until the period of liability under the bond is terminated, the bond remains in full force and effect.	FULL FORCE AND EFFECT

NOTE: Bond instruments are adjudicated, accepted or rejected, and a decision issued by the SO. Operators cannot begin surface disturbing activities until a satisfactory bond (Form 3809-1 or Form 3809-2) is accepted by the SO and subsequent plan approval or permission to disturb the surface under notice-level operations or a plan of operations is given to the operator by the Field Manager, or other delegated official (see BLM WO and State Manual Section 1203, Delegation of Authority).

Failure to file a satisfactory bond may be the basis for the FO to take an action such as not approving a plan or accepting a notice, not allowing operations to begin or expand, or not recognizing a transfer of the operations. Since a bond is not effective until it is accepted by the United States, imposing a time limit for a bond to be submitted to the BLM is not appropriate.

Responsible Official	Step	Action	Keywords
		The FO may set a time limit for additional bonding to be submitted for an amended operation; failure to submit the required additional bonding may result in the FO finding the operator in noncompliance.	
Adjudication	7	Upon satisfactory bonding being submitted by or on behalf of the transferee, Adjudication will accept the bond (see Chapters III or IV, as applies) and terminate the period of liability under the transferor's bond, if the transferor does not want the bond to remain available for future use.	
		If transferee has a statewide or nationwide bond, the liability for the transferred operations may be attached to such a bond (see Illustration 7-4).	
		If transferor has a statewide or nationwide bond, Adjudication may reduce the bond liability for the transferred operations from the transferor's bond (see Chapter X).	

B. Merger and Name Change Recognitions

The BLM provides efficient customer service by allowing operators to file merger and name change documentation in any SO for nationwide recognition. Only one SO needs to recognize a name change or merger. The principal's or obligor's name automatically changes by operation of law. All offices will ensure that the BLM records, manual and automated, always reflect the correct name. A bond rider is not required for a name change or merger but the BSS is required to be updated to reflect the name change or merger.

The office of record for the surviving entity's bond will process any merger or name change. The BLM records, Case Recordation and the BSS, will be updated consistent with existing data standards within 10 working days of merger and/or name change recognition. Operations affected by the merger and/or name change will be reviewed by the FOs, as needed, to ensure adequacy of the bond amount for the estimated cost of reclamation.

Following a merger, the surviving entity may file a replacement bond or Form 3809-4 may be filed for assumption of liabilities under the existing bond. The BSS must be updated and other SOs advised of a replacement bond to ensure liabilities are covered. Do not terminate the period of liability of any bond in a merged entity's name until adequate bonding is in place for the surviving entity.

All offices will advise customers to file merger or name change documentation with the BLM

office that accepted the surviving bond. Merger/name change documents must include a Certificate of Merger or Name Change and Secretary of State Certification. The customer should provide a list of all affected notices and plans of operations.

Responsible Official	Step	Action	Keywords
Receiving	1	Receive documentation. Date stamp and forward to Adjudication.	
Adjudication	2	Review BSS to determine if any bond is of record for the merging entities or the prior named entity. If a bond exists in another state for the surviving or prior named entity, send the documents to that office. If there is no prior bond, keep and process.	SEND TO OFFICE OF RECORD
	3	Within 10 working days of receipt, advise the BLM Bond Surety Group, via email, of receipt of merger /or name change documentation. Identify as a name change, merger or both and include the following: Merger: Date Received: _____ Merger of _____ into _____ Surviving Entity: _____ Processing Office: _____ Bond Type and Number: (<i>Existing and/or new</i>) Amount: \$ (<i>For each listed bond</i>) Name Change: Date Received: _____ Name Change from _____ to _____ Surviving Entity: _____ Processing Office: _____ Bond Type and Number: (<i>Existing and/or new</i>) Amount: \$ (<i>For each listed bond</i>)	SEND MESSAGE OF RECEIPT
Adjudication	4	The correct SO will review the documents. Pull Case Recordation Customer Info Index for all administrative states even if the customer provides a list of affected operations. Filter the report for case types	CUSTOMER INFO INDEX

Responsible Official	Step	Action	Keywords
		380910 and 380913; pending and authorized case disposition; and the names of all parties affected by the merger/name change.	
Adjudication	5	All of the existing bonds for the affected merging entities remain in place until the surviving entity identifies the bond(s) it wishes to maintain to cover the liabilities. Form 3809-4 is not required because the merger/name change is by operation of law. However, if the surety files a rider, Form 3809-4, and requests acceptance, adjudicate rider for acceptability and take appropriate action to accept the rider. Note that an office cannot terminate the period of liability of a bond maintained by another office; the office can only authorize the maintaining office to terminate the period of liability of any replaced bonds and adjust the automated entities. The processing SO can terminate the period of liability of a bond maintained by its office.	ASSUMPTION OF RIDER NOT REQUIRED TERMINATING THE BONDS REPLACED
	6	Recognize merger and/or name change by notice. See Illustrations 6-1 and 6-2.	ISSUE NOTICE
	7	Immediately update the BSS according to Illustration 3. If appropriate, accept new bond or bond rider (see optional language in Illustrations 6-1 and 6-2).	UPDATE BSS
	8	Email a copy of the recognition notice including signatory and date to BLM Bond Surety Group. Include a copy of the Customer Information Index Report and a PDF list of operations submitted by the customer to the appropriate SOs. The receiving SO will notify the FOs of the merger/name change and update LR2000 accordingly.	SEND NOTICE TO BLM
	9	The FOs, or whichever offices maintain the operational files, will document the operational case files and update Case	UPDATE CASE RECORDATION

Responsible Official	Step	Action	Keywords
Adjudication	10	<p data-bbox="527 273 1023 308">Recordation for the recognition notice.</p> <p data-bbox="527 346 1104 745">Ensure the FOs under the jurisdiction of the SO processing the action are notified of the merger/name change so they may begin to review the bond adequacy, if appropriate. A bond adequacy review is a separate parallel action. A merger/name change may trigger a review of estimated reclamation costs and bond adequacy, but processing the merger/name change action will not be held up to wait for completion of the bond adequacy review.</p>	

CHAPTER VII – Processing Requests for Increased Bond Coverage

A. General

Under 43 CFR 3809.552(b), when the authorized officer (AO) determines additional bond coverage is required, SO Adjudication must be advised to obligate the required increase to the bond. If the existing bond amount is insufficient, existing surety bonds can be increased by a rider, or personal bonds can be increased by a rider along with the appropriate funds. Operators cannot begin surface disturbing activities, including under a proposed modification, prior to satisfactory bonding having been accepted by the BLM. Failure to submit satisfactory bonding may be the basis for the BLM to not approve a plan or accept a notice, not allow operations to begin or expand, not recognize a transfer of the operations, or initiate an enforcement action.

It is the responsibility of the AO, the FO or other office as may be delegated in your state, to review operations and the estimated reclamation costs and adjust the required bond amounts when the degree of risk and magnitude of the potential liability to the Federal government and taxpayers for the reclamation exceeds the existing bond amount held. Reclamation cost estimates and financial guarantees for notice-level operations must be reviewed at the time of extension under 43 CFR 3809.333. Reclamation costs for plans of operations are reviewed every 3 years at a minimum, and every year if the operation is bonded incrementally. Also, some state regulations require periodic reevaluation of the reclamation costs and bond amounts held.

In addition, the AO will review to determine the need for increased bond coverage as may be necessary if, for example:

1. The operator has modified the approved plan or notice, requiring an increase. When reviewing the cost estimate because of a modification, the reclamation cost estimate and financial guarantee review must be for the entire operation, not just the modification;
2. The operation is entering a new phase, or incremental surface disturbance, which results in additional unreclaimed acreage; OR
3. A review of the reclamation plan and cost estimate indicates an increase in costs of reclamation, e.g., labor rates, requiring an increase in bond coverage.

B. Processing Requests for Increased Bond Coverage

Responsible Official	Step	Action	Keywords
Field Office	1	Determine that the estimated reclamation costs have increased thereby requiring an increase in the bonding pledged to guarantee the reclamation.	

Responsible Official	Step	Action	Keywords
Field Office	1a	Issue a decision (Illustration 7-1) to the operator with a copy to SO Adjudication specifying the following:	ISSUE DECISION
		(1) The conditions and reasons for increasing the required bond amount (e.g., from plan/notice modification or periodic operational review);	REASON
		(2) The increased bond amount required;	
		(3) That additional work may not begin until the full required bond amount has been accepted by the SO;	ADDITIONAL OPERATIONS
		(4) That the AO must set a deadline in the decision for the increase to be filed in the SO; and	DEADLINE
		(5) That operations may be suspended until the required bond amount has been accepted by the SO.	SUSPENSION OF OPERATIONS
Receiving Official	2	Receive decision, date/time stamp, and forward to Adjudication with bond or case file if applicable.	
Adjudication	3	Review the decision for the increased bond amount to ensure adequate written justification has been provided. If not, request the FO to provide the additional justification needed, including any added detailed information or factual documentation.	REVIEW DECISION
	4	If the bond has a sufficient uncommitted or unobligated amount remaining for the required increase, go to Step 12 below. If the bond on file is insufficient, the operator may provide an increase by one of the following ways: <ul style="list-style-type: none"> • Increase a surety bond by a rider. • Increase a personal bond by rider with an 	INSUFFICIENT BOND COVERAGE

Responsible Official	Step	Action	Keywords
		increase or additional, same type of financial instrument.	
		Additional surety bond (see Chapter III).	
		<ul style="list-style-type: none"> • Additional personal bond plus new financial instrument (see Chapter IV). • New bond for the full bond amount required (See Chapter VIII - Replacement of Bond or Financial Instrument). 	
	4a	Multiple bonds are allowed for a single operation. However, in such instances, each bond contributes to the operations as a whole. While the required bond amount may be increased for modifications increasing the disturbed area or from periodic cost reviews, each and every bond provides coverage for the entire operations. Do not accept a bond that is conditioned to cover only a specific area, activity, or time period of the operations. It is recommended to cross reference multiple bonds in BSS. Enter DE 2960 AC 113, Additional Information Received; Action Remarks, Addl Bond at #####. Enter such corresponding information for each additional bond.	MULTIPLE BONDS
	5	Route for BSS Entry.	
BSS Entry	6	Enter action into BSS. Enter Action Date: Date of FO Decision Requiring Bond Adjustment; DE 2960 AC 477; requires pending action 6020 (corporation), 6010 (individual), or if pending adjudication, code of adjudicative office, etc.; see all pending codes at DE 1424. Action Remarks: Amount of required increase (“increased to”). If this is a statewide or nationwide bond, also enter the serial number for which the increase is required.	AUTOMATED NOTATION
		Enter action into CRS. Enter Action Date:	

CRS Entry

Responsible Official	Step	Action	Keywords
		Date of FO Decision Requiring Bond Adjustment; DE 2910 AC 477; Action Remarks: Amount of Increase; requires pending entity.	
Adjudication	7	If additional bond coverage has been formally required by the FO and sufficient time has passed without the increase being submitted, the FO <u>may request</u> Adjudication to issue a follow-up decision, explaining the insufficient amount of bonding held for the reclamation cost estimate and bond amount required by the FO, to the operator and other bond parties (third-party surety/principal/surety, if surety bond), and calling for compliance with the FO's increased bond requirement within an appropriate period of time or risk possible loss of bond. The FO will determine the appropriate period of time for compliance, 30 to 60 days. (See Illustration 7-2).	FO MAY REQUEST SO TO SEND FOLLOW-UP
	8	<p>Decision must include:</p> <ul style="list-style-type: none"> • Justification from FO for increasing the bond and the bond amount required (additionally enclose a copy of the FO's decision(s) requesting the bond increase). • Statement that new/continuing operations will not be allowed until the new bond amount has been accepted by the SO, and that existing operations may be suspended by the FO if the operator is determined to be in noncompliance, and that other enforcement actions and penalties as allowed by 43 CFR 3809 may be assessed by the FO. <p>After decision is signed, distribute to operator and/or principal/obligor, and/or surety with copies to field and other operational offices as appropriate. Route for BSS entry.</p>	ISSUE DECISION

Responsible Official	Step	Action	Keywords
BSS Entry	9	Enter action into BSS. Enter Action Date: Date of SO Decision; DE 2960 AC 718; Decision Issued; Action Remarks: Amount of required increase and operations serial number, if this is a statewide or nationwide bond.	AUTOMATED NOTATION
Adjudication	10	If the increased bond or additional bond to cover the required increase is received within the time specified, review the bond, rider, financial instrument, etc. as applicable, for acceptance according to the procedures provided in Chapters III, IV, and V of this handbook.	RECEIVE RIDER OR NEW BOND
Field Office	11	Increases to a financial guarantee per 43 CFR 3809.552(b): If bonding in the full increase required is still not submitted after the SO has informed the operator of the required bond increase within the times allowed, report the failure to the FO. The FO will issue an enforcement order against the Operator requiring the full bond amount. Failure to correct noncompliance may lead to plan revocation or notice nullification under 43 CFR 3809.602.	REQUIRED BONDING NOT SUBMITTED
Adjudication	12	If the operator has a bond with a sufficient uncommitted balance for the increase, send a decision to surety/obligor/operator obligating the required reclamation amount to the bond for the plan of operations/notice, and advising the surety/obligor of the remaining bond balance available for future coverage. (See Illustrations 7-3 and 7-4). In the event the operator appeals the FO's reclamation cost increase, the bond amount obligated by the SO for the increase would remain obligated unless a stay of the FO's decision is requested and granted under the State Director Review process or under an appeal to IBLA.	SUFFICIENT BOND BALANCE

Responsible Official	Step	Action	Keywords
Adjudication	13	After the decision is signed, distribute to the operator and other bond parties with copies to the FO and other Surface Management Agencies (SMAs), as applicable. Forward decision/case file for automated entry.	
BSS Entry	14	<p>Enter action into BSS. Enter Action Date: Date of SO Decision Obligating the Increase under the Bond (Bond Adjustment Received) DE 2960 AC 478; Action Remarks: “Incr to” and Amount.</p> <p>If obligation is made to operations covered by a statewide or nationwide bond, also enter the new obligated bond amount in “serial number remarks” for the serial number to which the increased obligation was applied.</p>	AUTOMATED NOTATION
Adjudication	15	<p>If a bond/rider in an amount lower than that required by the decision is received, coordinate with the FO, and decide on one of the following actions:</p> <p>(1) Prepare a decision to obligor or principal and surety, returning bond and stating that no new operations will be approved and existing operations may be suspended until an acceptable bond in the amount required is received; or</p> <p>(2) Accept the bond in the amount stated stipulating to the obligor or principal and surety that the bond amount is insufficient and additional bonding must be submitted within no more than 30 days from the receipt of the decision. This option may be preferable if, for example, the bond amount submitted was less than 10 percent deficient. Route for BSS entry.</p>	INSUFFICIENT BOND RECEIVED
BSS Entry	16	<p>If the bond is returned: Enter Action Date: Date Bond Returned Unacceptable; DE 2960 AC 470; Action Remarks: Reason for non-</p>	AUTOMATED NOTATION

Responsible Official	Step	Action	Keywords
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acceptance.

If an additional bond is accepted in a deficient amount: Enter Action Date: Date bond filed; DE 2960 AC 468; Bond Filed, DE 2960 AC 469; Bond Accepted, and DE 2960 AC 477; Bond Adjustment Required, pending action required.

If a rider to the existing bond is accepted and the required amount remains deficient: Enter Action Date: Date rider filed, DE 2960 AC 478; Purpose of rider, and DE 2960 AC 479; Rider Accepted, and DE 2960 AC 477; Bond Adjustment Required, pending action required.

A decision issued by a SO is a decision issued by or on behalf of the State Director. Therefore, a decision issued by a SO is not subject to the State Director review provisions of 43 CFR 3809. An office, for example, the SO, cannot formally review its own decisions. Decisions issued by the district or field office are subject to and can be formally reviewed by the SO. State Office decisions are only appealable to IBLA.

**FORMAL REVIEW
OF DECISIONS**

Therefore, the review/appeal process is different and the appeals statements will be different on a decision issued by a SO versus a decision issued by a field or district office under the regulations at 43 CFR 3809.

CHAPTER VIII – Replacement of Bond for Financial Instrument**A. Filing of Replacement Bonds****KEYWORDS**

1. A principal may request to replace an existing bond and/or the financial instrument securing a personal bond because the principal:
 - a. Desires to move all its business to a different financial institution or bank for business reasons such as lower costs or better interest rates;
 - b. No longer wishes to pay premiums to the surety or to obtain lower premiums with another surety; or
 - c. Is forced to find another bond source due to bank or surety qualification changes.
2. The BLM may request a replacement bond, after part of the bond is collected to restore the bond to the required amount.
3. The BLM may also request replacement of a bond, depending on the amount of outstanding liability, following the Department of Treasury removing a surety as certified for Federal bonds or the surety canceling a bond.

REPLACEMENT BONDS**SURETY DECERTIFIED OR BOND CANCELLED**

Replacement of bonds must be handled carefully because of the danger of unintentionally leaving some reclamation obligations with diminished coverage or without any coverage. A new bond which is not specifically conditioned to completely assume any outstanding liability on the operation(s) covered by the existing bond may not cover all obligations that are covered by the existing bond. The BLM will not terminate the period of liability and, if a personal bond, release the financial instrument, until a replacement bond has been determined compatible and accepted.

The language of the surety and personal reclamation bond forms used for operations conducted under 43 CFR 3809 provide for the assumption of past liabilities by the new bond principal or bond principal and surety (Form BLM 3809 -1 and BLM 3809-2). The use of these forms provides assurance to the BLM that the new bond covers outstanding liabilities incurred by or on behalf of the principal. Do not terminate the period of liability of the prior bond until the replacement bond is accepted, or until all the outstanding liabilities have been properly and fully corrected.

OUTSTANDING LIABILITIES

The existence of unreclaimed land on a terminated plan or an expired notice indicates the operator has not fully complied with the terms of the

UNRECLAIMED LANDS

plan or notice. Therefore, the bond covering such operations **must remain in full force and effect** until adequately replaced or until the proper closure and surface reclamation have been accomplished by either an arrangement made by the surety or through the BLM contracting for the work. See Chapter XII, addressing default and collection on bonds.

If, however, the period of liability of the prior bond has been prematurely terminated and outstanding liabilities remain under the bond, the BLM will attempt to collect on that bond. If it is impossible to collect from the bond principal, the surety must pay. The surety may be reluctant to pay if the period of liability has been terminated. However, the surety is still deemed liable since the principal is liable for the damages it has caused in failing to comply with the reclamation obligations. The surety will most likely fulfill its obligation under the bond rather than risk losing its certification with the U.S. Department of the Treasury to underwrite bonds for the Federal Government.

**BOND
LIABILITY
TERMINATED
PREMATURELY
SURETY
REMAINS
RESPONSIBLE**

Upon default, the surety or principal under a personal bond makes a payment to the U.S. of an obligation (debt) incurred under mining or exploration operations, and the face amount of the bond is reduced by the amount of such required payment. After default, the principal on the bond must either: (a) post a new bond; (b) replenish the existing bond to the original amount; or (c) increase the existing bond if the BLM determines that ongoing bonding is required in an amount larger than the amount remaining after the default payment.

**BOND AMOUNT
REDUCED DUE
TO DEFAULT**

The principal is allowed to file separate or additional bonds in lieu of either posting a new bond or increasing the existing bond. If the principal uses this option and files an additional bond, the new or separate bond may not be restricted for only part of a plan of operations or notice or a period of operations. That is, any individual bond posted covers all reclamation obligations on the plan or notice. Also, note that the BLM may not use an individual bond from one operation for any obligation due or incurred under other operations. In cases where the obligation and payment are less than the bond face amount, and a new bond is filed or the existing bond is replenished to the fully required amount, adequate bonding is in full force and effect for future liabilities.

**SEPARATE OR
ADDITIONAL
BOND TO
REPLACE
DEFICIENT
BOND**

In those instances where the obligation in default is more than the face amount of the bond and the bond is depleted, collection efforts for the remaining obligation in default must continue. (See 43 CFR 3809.598 and Default and Collection of Bonds, Chapter XII).

**DEPLETION OF
BOND**

If the replacement bond is a personal bond backed by cash, letter of credit, time deposit, or negotiable Treasury securities, the BLM can quickly possess the funds to satisfy the remaining obligations. To not use such

**REPLACEMENT
PERSONAL
BOND**

funds would be contrary to the interests of the United States and could result in premature efforts toward collecting under the Debt Collection Act (DCA) and initiation of legal proceedings against the operations.

In the event that a surety bond (rather than a personal bond) is filed as a replacement bond to restore the bond to the required or increased amount if reclamation costs (and any interest penalties, assessments made to the BLM or to another surface management agency) exceeded the amount of the prior bond, and the bonded party failed to pay the full amount owed, the BLM demand for full payment is to be made against the replacement surety bond before initiation of any legal proceedings. **REPLACEMENT SURETY BOND**

Further collection efforts under the DCA or initiating legal proceedings on operations conducted under 43 CFR 3802/3809 are inappropriate when funds under a bond are available to secure compliance with the plan's terms.

B. Processing Replacement Bonds

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive bond. Date/time stamp. Forward to Adjudication.	
BSS Entry	2	Enter bond abstract in BSS. Enter Action Date: Date Bond Filed; DE 2960 AC 468; Action Remarks: Replacement for Bond No.	AUTOMATED NOTATION
Adjudication	3	Review bond to determine its acceptability following the steps in Chapter III or IV, depending on whether the replacement bond is a surety bond or a personal bond. Issue a decision to accept the replacement bond only after the following actions are completed, as appropriate for type of bond.	REPLACEMENT BOND REVIEW
	4	Before accepting a replacement bond and terminating the period of liability for the replaced bond, check that the two bonds are completely compatible, e.g., a replacement bond without a rider extending coverage to additional parties cannot replace a bond that had such a rider. Such a replacement bond could be accepted, but the prior bond's period of liability <u>cannot be terminated</u> unless all the	COMPATIBILITY OF BONDS

Responsible Official	Step	Action	Keywords
Adjudication	5	<p>necessary riders are filed or a determination is made that any liability covered under a prior rider no longer exists.</p>	
		<p>Terminate the period of liability of the prior bond effective the same date as acceptance of the replacement bond or appropriate rider. For a nationwide bond, as long as the replacement bond satisfactorily covers all outstanding liability, coordination with other BLM SOs is not necessary.</p>	
	6	<p>Complete processing of the replacement bond following the steps in the preceding applicable chapters of this Handbook. The termination of one bond (and return of the financial instrument, if a personal bond) and acceptance of the replacement bond can be combined into a single decision.</p>	<p>COMBINED ACCEPTANCE AND TERMINATION DECISION</p>
		<p>A copy of the decision must be provided to the following depending on the type of prior bond:</p>	
		<ul style="list-style-type: none"> a. To prior surety (home office and attorney-in-fact); b. To prior bank, with return of LC or CD; c. To accounts for refund of prior cash bond. 	
	7	<p>As of 2002, the Federal Reserve Bank (FRB) gave the National Operations Center (NOC/OC-621) the authority to reinvest Treasury securities upon maturity. The Treasury security will be automatically reinvested by the NOC unless NOC is contacted prior to the maturity of the Treasury security by BLM SO (email or memo) that the Treasury security is no longer needed because of termination of the period of liability under the bond or that the bond principal has pledged another form of security for the bond.</p>	<p>REINVESTMENT</p>

Responsible Official Adjudication	Step	Action	Keywords
	8	<p>A personal bond is considered replaced when a new satisfactory pledge (financial instrument), is accepted prior to the expiration of the prior security. If only the security for the personal bond is replaced without a time lapse and in the same amount as the original financial instrument, bond coverage continues and a new bond form is not required. However, if the principal is providing an increase in the bond coverage, either a new bond, or a rider to the existing bond that reflects the increased bond coverage, is required.</p> <p>If the new financial guarantee is a surety bond, Form 3809-1 is required. If the new bond is a personal bond submitted to replace a surety bond, Form 3809-2 is required with the pledge.</p> <p>If acceptable, accept the security as a replacement (Illustration 8-1) and continue using the same BSS bond number. This would apply to any personal bond where only the financial instrument is being replaced by another financial instrument (cash, CD, LC, or Treasury security). If the replacement financial instrument is different, change the “bond type” in BSS, e.g., from cash (bond type 5) to LC (bond type 3).</p>	<p>REPLACEMENT</p> <p>NEW BOND</p> <p>REPLACED FINANCIAL INSTRUMENT</p>
	9	<p>If the replacement bond is replacing a surety bond in its entirety, (43 CFR 3809.581(b)), the surety ceases to be held responsible for debts that accrued while the surety bond was in effect.</p> <p>The termination of the period of liability does not relieve the principal of any obligation arising out of the plan of operations, applicable laws, or regulations for any liabilities that may have accrued prior to the date the period of liability terminated.</p>	<p>SURETY BOND REPLACED</p>

Responsible Official	Step	Action	Keywords
		<p>However, pursuant to 43 CFR 3809.581(b), which became effective January 20, 2001, a surety is released from an obligation that accrued while the surety bond was in effect when a replacement financial guarantee covers such obligations to BLM's satisfaction. Therefore, when issuing a decision accepting the replacement bond, you may inform the surety that it is released from the past obligation.</p> <p>NOTE - Obtain obligor's written instruction prior to releasing an existing security, if it is unclear as to whether the new security is to replace an existing security or to secure a new bond. The BLM may require the obligor to furnish a signed statement, advising if the purpose of the new security is to replace or continue the original bond.</p>	
	10	<p>If the review indicates no outstanding liabilities by the BLM, terminate the period of liability of prior bond (Chapter XI).</p>	TERMINATE PRIOR BOND
BSS Entry	11	<p>For prior bond: Enter Action Date: Date of Decision Terminating Period of Liability of Bond; DE 2960 AC 473; Action Remarks: Effective date of termination of period of bond liability; General Remarks: Liabilities assumed by BLM Bond No. ____.</p> <p>For replacement bond: Enter Action Date: Date Replacement Bond Accepted; DE 2960 AC 469; Action Remarks: Bond replaces BLM Bond No. ____ Effective Date.</p>	AUTOMATED NOTATION
CRS ENTRY	12	<p>For prior bond: Enter Action Date: Date of Decision Terminating Period of Liability of Bond; DE 2910 AC 378; Action Remarks: Effective date of termination of period of bond liability; General Remarks: Liabilities assumed by BLM Bond No. ____.</p>	

Responsible Official	Step	Action	Keywords
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For replacement bond: Enter Action Date:
Date Replacement Bond Accepted; DE 2910
AC 909; Action Remarks: Bond replaces
BLM Bond No. ____.

CHAPTER IX – Termination of Period of Liability in Part

A. General

Statewide or nationwide surety bonds contain a provision in the “Bond Conditions” on the BLM bond Form 3809 1 (see Illustration 1-2) that allows a surety to reduce part of its liability by notifying the BLM that it is terminating additional coverage under such bond with regard to any new operations or interests acquired by the principal 30 days after the BLM receives the surety’s notice to reduce liability. The surety cannot terminate liability, or cancel bond coverage, for operations on a plan or notice covered by the bond that existed prior to the surety’s election to terminate future additional coverage.

It is important to note that **an individual bond, a bond for a single notice or plan of operations, is not subject to** the termination or cancellation of additional liability.

Termination of additional liability of a statewide/nationwide bond does not mean that use of the bond is not allowed. What is important is whether the bonded party’s interest in the plan or notice was acquired or established prior to the effective date of the election by the surety to limit bond coverage. Bond coverage remains in full force and effect for authorized surface disturbance. Cancellation does not apply to redisturbance of areas disturbed prior to the effective date of the termination.

The bond coverage is **still applicable** to plans or notices held or operated by the principal, **and to operations authorized** under the bond which were **filed prior to the election**. In addition, coverage continues to extend to any extension of a plan or notice which was covered by the bond prior to the receipt (plus 30 days) of the surety’s election, despite any expiration date of the term set forth in the plan or notice.

A surety election to cancel the bond in part or to terminate additional liability must be adjudicated expeditiously to avoid the possibility of other offices authorizing operations to which the statewide or nationwide bond will not be applicable due to the election to terminate additional liability made by the surety.

KEYWORDS

**SURETY
ELECTION TO
TERMINATE
ADDITIONAL
LIABILITY ON
STATE OR
NATIONWIDE
BONDS**

**INDIVIDUAL
BONDS NOT
INCLUDED**

**EXPEDITIOUS
HANDLING**

B. Processing Bonds Terminated in Part

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive notice of election to terminate liability in part from surety. Date/time stamp and forward to Adjudication.	SURETY ELECTION RECEIVED
Adjudication	2	Review notice of election for specific language whereby surety elects to terminate additional future coverage under the bond. A notice of the surety's cancellation indicates a desire to terminate the period of liability of the bond in full (see Chapter XI for guidance on terminating the period of liability).	ELECTION TO TERMINATE ADDITIONAL FUTURE COVERAGE
	3	Request reports from FO operations staffs, and other surface management agencies as applicable, regarding possible termination, consistent with Chapter XI. Unless clearly not the election allowed by the conditions of the bond (see IX.A), issue a decision acknowledging the election to terminate additional future liability under the bond effective 30 calendar days from date of receipt of such request by the proper BLM office (see Illustration 9-1).	
BSS Entry	4	Enter Action Date: Date Surety Notice is received electing to terminate additional bond coverage in Part; DE 2960 AC 474; Action Remarks: Enter effective date, (applicable for statewide and nationwide bonds only), 30 calendar days after receipt.	AUTOMATED NOTATION
Adjudication	5	After decision is signed, distribute to surety and principal. Route for BSS Entry.	
	6	Enter one of the following:	AUTOMATED NOTATION
BSS Entry	6a	Enter Action Date: Date of decision acknowledging termination of future liability under bond in part; DE 2960 AC 475.	

Responsible Official	Step	Action	Keywords
CRS Entry	6b	Enter Action Date: Date of decision acknowledging termination of future liability under bond in part; DE 2910 (No comparable code, use AC 378); Action Remarks: Indicate effective date and that it is a partial termination of the period of liability. Or,	
BSS Entry	6c	Enter Action Date: Date Bond Termination Request is Denied; DE 2960 476; Action Remarks: Reason termination in part is denied.	
CRS Entry	6d	Enter Action Date: Date Bond Termination Request Is Denied; DE 2910 AC 463; Action Remarks: Reason termination in part denied.	

CHAPTER X – Reduction of the Required Bond Amount

A. Reduction of the Reclamation Cost Estimate (RCE) and the Obligated Bond Amount

Upon the written concurrence of the FO AO and other regulatory or surface management agencies, as applicable, that the RCE and required bond amount is reduced upon completion (see 3809.591 for part reclamation), inspection, and approval of reclamation and site abandonment, the SO may reduce the amount obligated under an individual, statewide or nationwide bond. It is the responsibility of the AO to review and adjust the estimated cost of reclamation. The AO will review an operator's reduction request and determine any reduction that may be allowed in the required bond amount, if one of the following has occurred:

1. The operator modifies the operations, resulting in less surface disturbance or otherwise reducing the reclamation costs.
2. The operator has completed some or all of the reclamation.
3. A review of the RCE indicates a decrease in the cost of reclamation.
4. The area of proposed or existing disturbance is patented.

It is the responsibility of the SO to maintain a bond and to reduce the amount obligated against a bond. If the FO determines the RCE is reduced, the SO may reduce the amount of bond coverage obligated for the reclamation. The operator's bond requirement, or the obligation under a bond, may be reduced or the period of liability under the bond may be terminated altogether. Terminating the period of liability under a bond would be appropriate in the event multiple bonds had been accepted for the reclamation costs. (See Chapter XI for procedures to terminate the period of liability of a bond.)

A reduction of the **required** bond amount by the FO does not mean the penal sum of the bond is reduced by the SO unless bond reduction is requested by the surety, the bond principal, or the obligor. The completed reclamation returns the amount of bond that was determined as required for the associated disturbance to the bond as an unobligated or uncommitted bond amount. A reduction of the committed or obligated bond amount results in a portion of the bond becoming available as a reserve for future activities.

If the BLM finds the obligated bond amount may be reduced, the principal has two options:

1. Principal wants the unobligated bond amount for future use. The bond principal may wish to maintain an unobligated reserve, as it will save time and money in securing and submitting another bond or bond increase when reclamation costs exceed the amount of bond available. For example, an exploration operator may wish to maintain a bond in a certain amount so that bonding is available at all times for numerous ongoing exploration projects and reclamation costs can be efficiently

obligated to the bond by a decision from Adjudication whenever bonding is needed for new projects or modifications to existing ones.

2. Principal wants penal sum reduced. The bond to be reduced may be either a surety or a personal bond. The stated amount of a surety bond or a personal bond secured by a Letter of Credit (LC) may be reduced, or part of a cash bond may be refunded; but, a Certificate of Deposit (CD) or Treasury security would have to be replaced for a lesser amount at maturity or renewal because these are fixed financial instruments. Also, the BLM will not release the currently held CD or Treasury security without first having a replacement so there is no interruption in bond coverage.

B. Processing a Reduction in the Required Bond Amount

Responsible Official	Step	Action	Keywords
Receiving	1	Receive request to reduce bond liability from the surety, obligor, or principal. Date/time stamp and forward to adjudication. Adjudication will then route for BSS entry.	RECEIVE REQUEST
BSS Entry	2	Enter Action Date: Date Bond Reduction/Termination Requested: DE 2960 AC 472 or 477 as needed; Action Remarks: Note partial/total and by principal/operator/surety. Also note serial number(s), if a statewide/nationwide bond. Note that if you use AC 477, a pending entity is required. Then, when the bond adjustment is made, enter the action date and AC464, Bond Adjustment Received.	AUTOMATED NOTATION
Adjudication	3	Forward request to the appropriate FO(s). If the request affects more than one FO or state, send a copy of the reduction request to each affected office/state. Request FO to report on reduced RCE request. NOTE: If the reduction request is received by a FO, the FO will forward a copy of the request to SO Adjudication as soon as possible to enter the action into BSS and to coordinate action with other affected offices.	

Responsible Official	Step	Action	Keywords
CRS Entry		Enter Action Date: Date Bond Reduction/Termination Requested: DE 2910 AC 377; Action Remarks: Note phased reduction or partial termination request.	
Field Office	4	Determine whether the estimated reclamation costs for a plan or notice can be reduced to a lower amount.	DETERMINE REDUCTION
Adjudication	5	<p>If not already received, request FO to report (email record is sufficient) to SO Adjudication if the RCE and required bond amount for operations can be reduced to a lower amount, e.g., maximum of 60 percent if satisfactory reclamation has been completed to date. Written concurrence from other surface management agencies must be obtained by the SO prior to bond reduction, if such coordination is applicable. If not provided by the FO, obtain any documentation as may be necessary from other surface management agency or office, prior to processing reduction of the required bond (See Illustration 10-1). The reduction of bond liability should be completed within 90 days from receipt of the request.</p> <p>NOTE: If authorization to reduce the amount of the bond obligation is received from BLM operations/FO before a request from a party to the bond, contact the bond principal/obligor to verify its intentions as to disposition of the unobligated portion of the bond prior to authorizing a refund or reduction of the bond penal sum.</p> <p>NOTE: If an objection to the reduction is received from a BLM FO or another affected office, issue decision to the operator that until concurrence can be obtained, the obligated bond amount cannot be reduced. See Illustration 10-2.</p> <p>A satisfactory bond rider reducing the penal</p>	OBTAIN FO REPORT ON REDUCED RCE & BOND REQUIREMENT
			OBJECTION TO BOND REDUCTION
			RIDER REQUIRED

Responsible Official	Step	Action	Keywords
Adjudication	6	<p>sum of the bond must be executed and submitted to the SO. See Chapter V of this handbook for adjudication of the bond rider.</p> <p>If the FO and other parties consent to reduction of the RCE and required bond amount, and a satisfactory rider reflecting the reduced amount has been received from the bond principal, prepare a decision to the principal and surety, or to the principal and financial institution.</p> <p>State in the decision that the remainder of the bond will be retained pending completion of the remaining reclamation on the plan or notice. See Illustration 10-3.</p> <p>If financial guarantee is an LC, the decision may also provide the bank with BLM’s consent and authorization to reduce the LC. A bank will not adjust the amount of an LC except upon the applicant’s request.</p> <p>If the bond is a “cash” bond, authorize a refund of the reduced amount by decision after first receiving a satisfactory rider reflecting the reduced bond amount.</p> <p>The amount of a single CD cannot be reduced; however, if there is more than one CD securing the bond, another alternative is possible. For example, if a personal bond in the amount of \$10,000 has been secured by four CDs each in the amount of \$2,500, and the required bond amount is reduced by \$3,000, one of the CDs may be returned if the remitter/bond principal wants the unobligated portion of the bond reduced and a return of the money.</p> <p>Route for automated entry.</p>	<p>PREPARE DECISION REDUCING BOND LIABILITY</p>
BSS Entry	7	<p>Enter into the Bond and Surety System.</p>	<p>AUTOMATED NOTATION</p>

Responsible Official	Step	Action	Keywords
	7a	Enter Action Date: Date BLM notifies operator that bond needs to be increased/decreased; DE 2960 AC 477, Bond Adjustment Required; Action Remarks: “Decreased to” adjusted bond amount; pending action required.	
	7b	If the amount of the bond submitted is reduced, change bond amount on bond abstract screen.	
Field Office	8	The regulations at 43 CFR 3809.590 require that prior to “final financial guarantee release” on a plan of operations, a notice of such will be either posted in the local BLM office or published in a local newspaper of general circulation and BLM will accept comments for 30 days.	FINAL FINANCIAL GUARANTEE RELEASE
8a	Post or publish a notice proposing the final release of the financial guarantee. Illustration 10-4 is a sample notice for this purpose.		
8b	At the end of the 30-day period if no comments were received, or upon resolution of any comments received, send a letter to the operator with a copy to the SO Adjudication which recommends the final release of the financial guarantee. See Illustration 10-5. Adjudication can then continue processing the release of the financial guarantee.		
<p>NOTE: Adjudication will also terminate the period of liability of the bond, if the principal so desires (see Chapter XI for guidance on terminating the period of liability of a bond). Adjudication will still need to obtain reports from all offices as described above prior to releasing the financial guarantee and/or terminating the bond period of liability.</p>			

Chapter XI – Termination of the Period of Liability of a Bond

A. General

When the BLM terminates the period of liability under a bond, the action sets a date after which no new liabilities may accrue under the bond. The termination of the period of liability does not release liabilities incurred prior to the termination date.

The procedures for termination of the period of liability will be the same where BLM holds the bond regardless of whether the surface ownership is the BLM, another SMA, or private. It is advisable in cases of private surface to contact the surface owner to determine what arrangements or agreements were made by the operator with the owner and any objections or problems the surface owner may have.

The operator must satisfy the Federal reclamation requirements as well as the terms and conditions of the approved plan of operations or the notice filed with BLM, regardless of any arrangements made by the operator with the surface owner, e.g., payment for surface damages. In the case of a dispute between the private landowner and the operator, the BLM will require the surface to be reclaimed/restored in accordance with the BLM-approved plan of operations or as specified in the 3809 notice filed with the BLM.

KEYWORDS

TERMINATION OF BOND PERIOD OF LIABILITY

B. Processing Request for Termination of the Period of Liability

Responsible Official	Step	Action	Keywords
Receiving Official	1	Receive notice of cancellation from surety or letter requesting BLM to terminate the period of liability under the bond from the surety, operator/principal, or third party surety. Date/time stamp and forward to Adjudication.	TERMINATION REQUEST RECEIVED
BSS Entry	2	Enter Action Date: Date Bond Termination Requested; DE 2960 AC 472; Action Remarks: Enter “TOTAL.”	AUTOMATED NOTATION
Adjudication	3	When a surety requests termination of a nationwide bond, within 5 days, request a report through the BLM Bond Surety group from all BLM SOs as to whether the bond may be terminated (see Illustration 11-1). If a reasonable period of time (10 working	REQUEST TERMINATION REPORT FROM BLM STATE OFFICES

Responsible Official	Step	Action	Keywords
		<p>days) has passed with no answer from the affected office(s), a second, and third if necessary, contact is to be made with those offices.</p>	
		<p>As a recipient of a request for report of termination, obtain a BSS printout showing all plans and notices in your state covered by the bond. Furnish this list to the appropriate FO staffs in your state with a request for the FO to review the reclamation costs of the plans/notices covered by the bond.</p>	<p>OBTAIN LIST OF ALL OPERATIONS COVERED BY THE BOND</p>
		<p>The reply to the requesting office needs to indicate the efforts to determine the continuing need for bond coverage or to prepare for the 30-day comment period (see next step) or other delays in response.</p>	
<p>Adjudication</p>	<p>4</p>	<p>Unless you are accepting a replacement bond, do not terminate the period of liability of a bond until receiving notice from all affected BLM offices and surface managing agencies that surface disturbance no longer exists.</p>	
	<p>5</p>	<p>For an individual/statewide/nationwide bond in your state, request a report from the FO(s) as to whether the bond may be terminated. Request and response may be made by electronic mail or fax (see Illustration 11-2). Also obtain concurrence with or objection to termination from other surface management agencies as required by memoranda of understanding or other cooperative agreements.</p>	
	<p>6</p>	<p>If notification is received that funds from the bond are required, proceed to make a demand against the bond to collect the monies as needed.</p>	
	<p>7</p>	<p>Prepare a standard notice to principal and surety advising them of the status of the bond termination request when the termination</p>	<p>NOTICE OF TERMINATION STATUS</p>

Responsible Official	Step	Action	Keywords
		reports are required from several offices and may take considerable time to complete, e.g., for statewide/nationwide bonds. (See Illustration 11-3).	
Adjudication	8	If the surety has requested termination of the bond without notifying the principal, use of the standard notice (Illustration 11-3) will effectively notify the principal of the surety's request and additional notification of the principal is not necessary. If the principal objects to the termination of the period of liability, advise the principal that the BLM will discontinue processing the termination request until the principal and surety have resolved the matter.	SURETY REQUEST FOR BOND TERMINATION WITHOUT KNOWLEDGE OF PRINCIPAL
	9	Upon receipt of all reports:	
	9a	If all reports consent to the liability termination, terminate period of liability of bond by decision (see Illustration 11-4).	TERMINATE BOND LIABILITY
	9b	If an objection to bond termination is received, prepare a decision specifying the reason the period of liability cannot be terminated (see Illustration 11-5).	TERMINATION NOT APPROVED
	10	After the decision is signed, distribute to principal and surety. Route for BSS Entry.	
BSS Entry	11	Enter into BSS.	AUTOMATED NOTATION
	11a	Enter Action Date: Date of Decision terminating the period of liability; DE 2960 AC 473; Action Remarks: Effective date of termination of period of bond liability; or	
	11b	Enter Action Date: Date of decision that denied termination of the bond; DE 2960 AC 476; Action Remarks: Effective date of denial; General Remarks: Reason for denial.	

Responsible Official Adjudication	Step	Action	Keywords
	12	<p>If, after the decision has been issued terminating the period of liability of a bond, the surety or principal requests the bond (Form 3809-1 or Form 3809-2) be returned, respond that once a document is received by the BLM, it is a matter of BLM record and a permanent part of the case file. (Conversely, the obligor's financial pledge [i.e., the financial instrument: cash, CD or LC] for the bond [i.e. the financial guarantee] is returned.) Records are retained by the BLM in accordance with the retention schedules and cannot be returned or otherwise destroyed. The obligor's financial instruments pledged as security for a bond, i.e., the collateral for a bond, are returned to the person who posted it thus terminating the Secretary's power of attorney for control of the depositor's money.</p> <p>If the bond principal or surety persists with a request for an unconditional release of the bond liability AFTER the BLM has terminated the period of bond liability, respond with a decision denying the request.</p>	<p>BOND CANNOT BE RETURNED</p> <p>FINAL PLEDGE RELEASED</p>
	13	<p>As of January 20, 2001, the regulations at 43 CFR 3809.581(b) provide that a surety (not a principal or an obligor) may be released from an obligation that accrued while the surety bond was in effect when a replacement bond covers those obligations satisfactorily. Neither the surety nor the bond principal is released from an obligation when the bond is terminated. Termination only sets a specific date after which no new liabilities may accrue under the bond.</p>	<p>NO UNCONDITIONAL RELEASE OF THE BOND LIABILITY</p> <p>SURETY MAY BE RELEASED <u>ONLY</u> WHEN THE BOND IS REPLACED</p>
	14	<p>If, after the decision has been issued terminating the period of liability of the bond, the surety/principal notifies the BLM the period of liability was terminated in error and principal wants the bond to remain accepted for future use (may occur when the bond has</p>	<p>RESTATEMENT BOND LIABILITY TERMINATED IN ERROR</p>

Responsible Official	Step	Action	Keywords
		no obligations against it), Adjudication will reinstate the bond by decision after confirmation from the surety that the bond is still in full force and effect.	

CHAPTER XII – Forfeiture and Collection on Bonds

A. Forfeiture & Collection Procedures – General

If enforcement actions do not result in compliance and ultimately reclamation, the surety on a bond, or the obligor on a personal bond, is obligated to make payment to the United States of any indebtedness due under the plan of operations or notice. However, all available measures designed to obtain compliance must be taken prior to collection on a bond. If a bond held by the BLM also covers National Forest System lands, the FO must initiate contact with the appropriate Forest Service office and request identification of any defaults on the plan of operations or notice performance.

BLM will initiate the forfeiture of the financial guarantee pursuant to 43 CFR 3809.595:

1. The BLM AO at the FO decides to require forfeiture of all or part of a personal or surety bond. Normally this would occur after the BLM has exhausted its enforcement options and determined that the operator is unwilling or unable to meet the terms and conditions of the notice or approved plan pursuant to 43 CFR 3809.595.
2. The FO sends the operator and/or mining claimant by certified mail, return receipt requested, a default notice in the form of a decision, (see H-3809-1 Appendix A, Template 6.5-1, Forfeiture of Financial Guarantee). Courtesy copies are sent to the surety company and the state agency holding the bond informing them of BLM's decision to forfeit the financial guarantee. If BLM holds the bond, the SO will be copied on the notification. The notification will include the following information: (1) BLM's decision to require the forfeiture of all or part of the financial guarantee; (2) reasons for the forfeiture; (3) the amount of forfeiture; and (4) how the operator may avoid forfeiture. Notification will be done in the form of a Decision so appeal language will be included.
3. If no action results from #2, the FO prepares a default report to the SO describing the failure of the operator, and the surety, if a surety bond, to perform the required work and the estimated costs. A default report contains the default notice and all previous correspondence sent to and received from all parties concerning the demand for work, reclamation, or compliance with the terms and conditions of the plan of operations or notice.
4. SO Adjudication will send a Decision to the surety, if surety bond, or the principal, if a personal bond, demanding payment under the bond for non-performance by the operator or surety, depending on the type of bond. If a personal bond, the BLM also demands payment of a CD, LC, Treasury security, etc. from the financial institution or appropriates the funds of a personal bond secured by cash. The Decision will require that one of the following actions take place:
 - a. The operator shall commence the specified work within 30 days (or other reasonable period of time, based on seasonal factors involved) and continue the work diligently to completion.

- b. The surety directly enters into a contract, subject to BLM approval, such that the specified work will commence within 30 days (or such other reasonable period of time) and continue diligently on an approved compliance schedule to completion, with the contractor directly billing the surety for the work done.
- c. The surety authorizes in writing within 30 days for the BLM to act as the surety's agent to contract and oversee the performance of the specified work, with the contractor directly billing the surety for payment. In this case, the surety must pay the United States (BLM) an additional percent of the payment amount to compensate the United States for administrative costs for the contract (seek current Washington Office guidance), or the current amount as specified in BLM Handbook H-1510-3 *Contracting for Construction*, with the total costs incurred not to exceed the bond face amount (see Illustration 12-2). The administrative fee is assessed at a percent of the actual cost of the required reclamation. This fee is charged only when the BLM is forced to contract to have the work completed.
- d. Submit the penal sum of the bond.

Note that the first two options are the BLM's preferred approaches. The third option should only be used as a last alternative since it places a greater administrative burden on the FO and SO.

5. Indicate specifically in the certified Decision sent to the operator, claimant, and/or surety that if none of the above occurs within the time specified, the BLM will take action to attach (initiate forfeiture of) the bond for the specified amount (in accordance with instructions in Chapter XII.C), which will represent the cost to the United States of performing the work.
6. The work performance costs are to be based on a statement of work developed by the FO operations staff and preferably three or more estimates by contractors with expertise for the type of work required. The payment to the contractor by the surety must be limited to the face amount (penal sum) of the bond. When the costs exceed the amount of the bond, the principal must make full payment of that amount which is in excess of the face amount of the bond. This amount in excess does not constitute a demand on the bond; it leaves the total bond amount, if any, available.
7. If enforcement progresses to collecting the bond, and all attempts to collect under the bond fail, or if the financial guarantee does not cover the costs for complete reclamation, upon complete reclamation of the site, the BLM will initiate a debt collection action to recoup the costs in excess of the financial guarantee that the BLM incurred in order to close the case. See BLM Handbook 3809-1 Section-13.6.2 "Debt Collection" for more information.
8. If payment is not made by the surety, SO Adjudication initiates action against the surety via the US Department of the Treasury with a copy to the Regional Solicitor's Office.

NOTE: Performance is always an available option to the operator/surety and is usually preferable to the BLM. The surety may not seriously contemplate performance until the BLM advises the surety of this step. Much negotiation may occur between steps 4 and 6. To facilitate these negotiations, consider contacting the Regional Solicitor and/or the Office of Collaborative and Alternative Dispute Resolution. BLM's ADR contact can be found at this website: <http://www.doi.gov/pmb/cadr/index.cfm>

9. Upon the BLM receiving the funds under a surety bond, the surety is released from further liability, and a reclamation contract may be initiated. The operator remains responsible for actual costs of reclamation above bond amount. If the operator continues to operate, the operator must provide a restored or new bond in a minimum amount as specified by the FO.

B. Statute of Limitations

Pursuant to 28 U.S.C. 2415, a 6-year statute of limitations is established for every action for money damages brought by the United States, founded upon any contract, such as a bond. This 6-year period commences when the right of action occurs (see Chapter XIII, Statute of Limitations). Reclamation must begin within a reasonable time after a notice expires, operations cease, or reclamation ordered by the BLM. Accordingly, the right of action that triggers the 6-year period will begin after a reasonable time has expired. Due to the difficulty in defining a reasonable time, all problems related to expired, suspended, or otherwise ceased operations must be identified and solved as quickly as possible.

All operations must be inspected by FO personnel as soon as possible after the operations expire; a suspension order is issued; or the operations cease. The operator and claimant, if appropriate, must be promptly notified of any deficiencies.

All proposed work must be approved by the FO AO and all work done must be inspected by the FO. The BLM must take action within 6 years of the right of closure. When assessments for noncompliance or civil penalties are made and forwarded to SO Accounts for processing under the Debt Collection Act, SO Accounts must coordinate with SO Adjudication to ensure that all available bond monies have been demanded in accordance with the procedures in this handbook prior to processing for debt collection under the Debt Collection Act (see Department of the Interior Manual 344).

C. Specific Procedures for Collection of Surety Bond

Responsible Official	Step	Action	Keywords
		If neither the operator nor the surety perform as required by the default notice within the time specified and the operator/surety does not respond after further efforts to obtain compliance, the	SURETY BOND COLLECTION

Responsible Official	Step	Action	Keywords
		following actions are taken to attach/collect/forfeit the bond:	
Field Office	1	FO staff must prepare default report to SO Adjudication describing the failure of the operator or surety to perform specific actions required. Include copies of all previous correspondence sent to and received from these entities. Recommend that action be taken by Adjudication to attach the bond in a specific amount, not to exceed the face amount of the bond.	PREPARE DEFAULT REPORT
Receiving Official	2	Receive default report from the FO. Date/time stamp and forward to BSS/Adjudication.	
BSS Entry	3	Enter Action Date: Date Default Determined; DE 2960 AC 483; Action Remarks: Enter amount and type of default; pending action required.	AUTOMATED NOTATION
LR2000	4	Identify all operations of the operator.	
Adjudication	5	In the case of a demand on a statewide or nationwide bond, notify all appropriate offices (FOs for a statewide bond by email and SOs for a nationwide bond by the BLM Bond Surety Group to request a report of any liabilities that might exist for the principal (see Illustration 12-3).	
Adjudication	6	Check with other SMAs, as appropriate, for responsibilities under their jurisdiction which may be covered by the bond. For example, a county agency may have accepted the bond held by the BLM in lieu of requiring the operator to post a separate bond for the same purpose. If such exists, notify the county agency of the default.	

Responsible Official	Step	Action	Keywords
	7	<p>When all responses from the appropriate FOs/SOs have been received, prepare a decision to the principal and surety requiring forfeiture and demanding payment under the bond for default (see Illustration 12-4). The decision is to include:</p> <ul style="list-style-type: none"> • Nature of default with reference to the notice of noncompliance; • Documentation that all attempts have been made under formal procedures to require the default be corrected. • The amount to be forfeited under the bond, not to exceed the face value of the bond, with justification to support the amount to be collected. • Specific period of time allowed (not to exceed 60 days), for surety to make payment requested. • How to avoid forfeiture (43 CFR 3809.596(d)). • Statement that failure to make payment may result in the BLM recommendation to the Department of the Treasury to remove surety from list of certified, acceptable sureties and/or initiation of judicial proceedings to enjoin the operator from further actions and to obtain monetary damages for the operators actions. • Statement that there are criminal penalties for failure to comply with 43 CFR 3809, as stated in 43 CFR 	<p>DEMAND PAYMENT DECISION</p>

Responsible Official	Step	Action	Keywords
		3809.700.	
Adjudication	8	After the decision is signed, send by certified mail or courier service to surety, principal, and state agency, with a copy to operator and claimant if different than principal. Suspend case file for follow up action. Route for BSS Entry.	
BSS Entry	9	Enter action into BSS.	AUTOMATED NOTATION
	9a	Enter Action Date: Date of Notification of Default Correction Request; DE 2960 AC 484; pending action required; and	
	9b	Enter Action Date: Future Action Suspense When Payment from Surety Due; DE 2960 AC 247.	
Adjudication	10	If surety/operator does not comply with the decision and does not appeal:	PAYMENT NOT MADE
	10a	If surety fails or refuses to forfeit the bond, prepare a letter and attach a resume of actions taken, as described in the regulations at 31 CFR 223, to the Department of the Treasury – FMS, Surety Bond Branch, 3700 East West Highway, Room 6F01, Hyattsville, MD 20782, advising that surety has failed to render payment under bond and request Treasury to take action to decertify the surety (see Illustration 12-5); and	REQUEST TREASURY TO DECERTIFY SURETY
Adjudication	10b	Prepare memorandum to appropriate Solicitor for necessary judicial action under 43 CFR 3809.596(d)(1) providing copies of the letter to Treasury, decision to surety and principal and the resume of actions and any other required actions at 43 CFR 3809.604 and background (see	REFER DEFAULT CASE TO SOLICITOR

Responsible Official	Step	Action	Keywords
		illustration 12-6); and	
	10c	Prepare decision to principal and surety advising that judicial action is being initiated due to nonpayment, i.e., default under the bond (see Illustration 12-7).	SEND SURETY AND PRINCIPAL DECISION OF ACTIONS
		If the total forfeited amount is collected from the surety:	
SO Accounts	11	Deposit monies to subactivity 5320 (repair of damaged lands). The reclamation contract may be administered under an agreement with an outside agency. If so, follow the procedures in the agreement. If there is no separate agreement, follow the BLM guidance as follows:	PAYMENT MADE BY SURETY
FO Operations/ Compliance Specialist	11a	Develop a scope of work, estimate the costs of reclamation accordingly, and prepare a requisition for the SO/FO contracting personnel to obtain bids from contractors with expertise for the type of work required. Send a copy of the requisition to the SO Adjudication to be filed in the bond case file.	
		Contracts exceeding a certain amount may have to be handled by the SO Procurement/Contracts or by the National Operations Center (Denver). Not all FOs have contracting officers, and some states have delegated different contracting levels to the FOs, so close coordination between the contracting personnel of the FO and the SO is essential. Review your state's Delegation of Authority for the correct position of responsibility.	
Field Office	11b	The successful contractor as	

Responsible Official	Step	Action	Keywords
		<p>determined by the contracting officer may now be awarded the contract and begin the reclamation work. When the work is completed, the contractor is required to submit an invoice for payment to the BLM FO Solid Minerals Operations. FO will inspect the work and, if approved, will then authorize payment from the bond proceeds. If actual costs incurred are less than the estimated costs, the SO will refund the difference in accordance with 43 CFR 3809.599.</p>	
	11c	<p>When the forfeited amount is collected from the surety, the face amount of the bond is reduced by the amount collected.</p>	DEFAULT REMEDIED
Adjudication	12	<p>When collection occurs, issue a decision acknowledging receipt of forfeited amount and require the principal to restore the face amount of the bond back to the minimum amount required or such increased amount as may be specified by the FO in accordance with 43 CFR 3809 or 3802.</p> <p>Alternatively, the principal may be requested to furnish new bond coverage (see Illustration 12-8). Failure to furnish new bond coverage subjects all plans and notices covered by the bond to suspension of operations or other enforcement action.</p>	RESTORE BOND TO FULL AMOUNT
Adjudication	13	<p>If the payment is made by the surety from a statewide or nationwide bond that may be applicable to obligations on plans or notices under the jurisdiction of another SO, the appropriate SOs must be promptly notified by copy of the decision that payment has been made by the surety under the bond. Such notification will also be sent through the BLM Bond Surety Group email.</p>	NOTIFY OTHER OFFICES PAYMENT MADE

Responsible Official	Step	Action	Keywords
	14	<p>If it is determined that bond coverage is no longer required, the period of liability may be terminated.</p> <p>Otherwise, the amount of the bond must be restored, or additional satisfactory bonding must be submitted, to cover the remaining estimated reclamation costs.</p> <p>If the surety has met its contractual obligation under the bond by surrendering the penal sum of the bond, issue a decision to the surety releasing the surety from further obligation under the bond (see Illustration 12-9).</p>	
BSS Entry	15	<p>If payment is made in full by the surety, enter into the BSS:</p> <p>Enter Action Date: Date default is corrected; DE 2960 AC 485; Action Remarks: Indicate PARTIAL if only partial payment of default is made.</p> <p>Enter Action Date: Date default payment is received from surety; DE 2960; AC 486, Action Remarks: Amount of payment received.</p> <p>Enter Action Date: Date of notification that bond adjustment is required; DE 2960; AC 477; Action Remarks; Enter amount and that bond must be increased to full amount required. (Amount required may have been increased by FO in recalculating the reclamation costs.)</p> <p>Enter Action Date: Future action suspense date when restoration of bond to required amount is due; DE 2960 AC 247; Action Remarks: Restoration of bond to full amount required.</p>	AUTOMATED DECISION

Responsible Official	Step	Action	Keywords
Adjudication	16	If the bond is satisfactorily restored to the face amount, prepare a decision accepting the bond restoration.	BOND RESTORATION
BSS Entry	17	Enter Action Date: Date bond adjustment is received; DE 2960 AC 464; Action Remarks: Effective date (MM/DD/YYYY).	AUTOMATED NOTATION
Adjudication	18	If payment by the surety is less than the penal sum of the bond, determine the reason for such, coordinate with the FO(s), and take one of the following actions:	FULL PAYMENT NOT MADE
	18a(1)	Partial payment may be for justified reason by the surety. For example, under a statewide or nationwide bond, the surety may choose to pay the bonds on some operations while continuing to choose to perform the required reclamation on other operations. If this occurs issue subsequent decision stating payment(s) received or reclamation arrangements agreed to by the BLM, adjusting the demand for performance or payment as required. If surety pays for some of the operations under a statewide or nationwide bond, issue a decision stating what bond obligations have been paid and those that remain outstanding. Again recite actions that will take place if bond payment is not made immediately on the remaining operations (see Illustration 12-10).	PARTIAL PAYMENT REMITTED BY SURETY
	18a(2)	Prepare a decision to the responsible party (operator/claimant) advising that action is being initiated to suspend all affected operations when payment by surety is less than total obligation and surety/principal refuses to pay the remaining obligation, provide a new	DEBT DUE EXCEEDS BOND PAYMENT BY SURETY

Responsible Official	Step	Action	Keywords
		bond, or to restore the bond amount.	
	18b	Prepare a memorandum to appropriate Solicitor advising of action to suspend operations to be initiated due to default and failure to make bond payments required (see 3809.601 and H-3809-1).	REFER DEFAULT CASE TO SOLICITOR
	18c	Notify the appropriate FOs and SOs that all appropriate bond monies have been collected but are insufficient to cover the total reclamation costs.	
	19	To deposit partial payment received, see Chapter XII.C.11.	
BSS Entry	20	Enter in BSS.	AUTOMATED NOTATION
	20a	Enter Action Date: Date case is sent to Solicitor for enforcement; DE 2960 AC 960; Case sent to; Action Remarks: SOL; Pending action optional. General Remarks: Pending legal action due to nonpayment on default.	
	20b	Enter Action Date: Date litigation is filed; DE 2960 AC 736; Action Remarks: Nonpayment on default.	

D. Procedures for Collection on Personal Bond Based on BLM/SMA or Surface Owner Request

If the operator fails to perform as required by the notice of noncompliance within the time specified, the following actions are taken to attach a personal bond:

Field Office	1	FO solid minerals personnel must prepare default report to SO Adjudication describing the failure of the operator to perform the specific work required. Include copies of all previous correspondence sent to and received from these entities. Recommend that action be taken by SO Adjudication to appropriate the	PREPARE DEFAULT REPORT
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Responsible Official	Step	Action	Keywords
		obligor's personal bond. Include a copy of the FO requisition for contracted work.	
Receiving Official	2	Receive default report. Date/time stamp and forward to BSS or Adjudication.	
BSS Entry	3	Enter Action Date: Date default determined; DE 2960 AC 483; Action Remarks: Specify amount of default and type of default.	AUTOMATED NOTATION
LR2000	4	Identify all interests of the operator.	
Adjudication	5	In the case of a demand on a statewide or nationwide bond, notify all appropriate offices (FOs for a statewide bond and all SOs for a nationwide bond) by the BLM Bond Surety Group, as appropriate, to request a review and report any liabilities that might exist for the principal (see Illustration 12-3).	
	6	Check with other SMAs, as appropriate, for responsibilities under their jurisdiction which may be covered by the bond. For example, a county agency may have accepted the bond held by the BLM in lieu of requiring the operator to post a separate bond for the same purpose. If such exists, notify the county agency of the default.	
Adjudication	7	When all responses from the appropriate FOs/SOs have been received, prepare decision to obligor advising of the appropriation of the personal bond due to forfeiture (see Illustration 12-4). The decision is to include the following:	DEMAND PAYMENT DECISION
	7a	Nature of default; reference notice of	

Responsible Official	Step	Action	Keywords
		noncompliance.	
	7b	Documentation that all attempts have been made under formal procedures to require the default be corrected.	
	7c	The amount to be forfeited under the bond, not to exceed the face value of the bond, with justification to support the amount to be collected. Make sure all the steps in 43 CFR 3809.596 have been covered by the FOs. Send decisions by registered mail or courier service.	
Field Office	8	FO operations/compliance specialists will develop a scope of work, estimate the costs of reclamation accordingly, and prepare a requisition for the SO/FO contracting personnel to obtain bids from contractors with expertise for the type of work required. Send a copy of the requisition to the SO Adjudication to be filed in the bond case file.	
		Contracts exceeding a certain amount may have to be handled by the SO Procurement/Contracts or by the National Operations Center (Denver). Not all FOs have contracting officers, and some states have delegated different contracting levels to the FOs so close coordination between the contracting personnel of the FO and the SO is essential.	
		The successful contractor as determined by the contracting officer may now be awarded the contract and begin the reclamation work. When the work is completed, the contractor is required to submit an invoice for payment to the BLM FO Solid Minerals Operations. FO will inspect	

Responsible Official	Step	Action	Keywords
		the work and, if approved, will then authorize payment from the bond proceeds. If actual costs incurred are less than the estimated costs, the difference may be refunded by SO Adjudication to the obligor.	
	9	If a bond secured by a negotiable Treasury security is in default, notify the Negotiable Securities Manager (OC 621), by memorandum, of the nature of the default and request that the Treasury security be sold to obtain the funds needed to cover the default. The Negotiable Securities Manager (OC-621) will coordinate the sale of the security with the Federal Reserve Bank. After the sale, the NOC will transfer the proceeds to the appropriate BLM office's suspense account.	DEFAULT PROCEDURES
	10	If the personal bond is secured by a LC, CD or other financial instrument, prepare a draft for payment and enclose the original security, a copy of the executed bond form (containing the power of attorney), and the payment draft with the decision. (Use Illustrations 4-6 and 4-7 or Illustration 4-14, as appropriate.)	COLLECTION OF LC, CD
		If the personal bond is secured by cash, instruct accounts to transfer the funds to 5320 in accordance with the procedures in your office. If the cash was accepted on an accounting advice (dated pre-2000), properly complete the goldenrod copy of the accounting advice to transfer funds to 5320.	
SO Accounts	11	Deposit monies to the subactivity 5320 (repair of damaged lands). The reclamation contract may be administered under an agreement with	PAYMENT MADE BY SURETY

Responsible Official	Step	Action	Keywords
		an outside agency. If that is the case, follow the procedures in the agreement. If there is no separate agreement, follow the BLM guidance as follows.	
Adjudication	12	Use Illustration 12-11 to notify the obligor of the appropriation of the personal bond, as necessary. Route for BSS Entry.	
BSS Entry	13	Enter Action Date: Date of notification of default correction request; DE 2960 AC 484. Enter Action Date: Future action suspense date when payment of default is due; DE 2960 AC 247.	AUTOMATED NOTATION
Adjudication	14	When payment is made by the obligor to the BLM, the face amount of the bond is reduced by the amount paid. If bond coverage continues to be needed, require restoration of the bond be made by the operator.	DEFAULT REMEDIED
	15	When payment is made, issue a decision acknowledging receipt of payment and requiring the obligor to restore the face amount of the bond back to the minimum amount required or such increased amount as may be specified by FO operations in accordance with 43 CFR 3809. Alternatively, the obligor may be requested to furnish new bond coverage (see Illustration 12-8). Failure to restore the bond subjects all plans and notices covered by the bond to suspension of operations.	
	16	If the payment is made by an obligor on a statewide or nationwide bond that may be applicable to obligations on plans or notices under the jurisdiction of another SO, each SO must promptly	

Responsible Official	Step	Action	Keywords
		be notified by a copy of the decision that payment under the bond has been made by the obligor. Such message will be sent using the BLM Bond Surety Group email.	
	17	If it is determined that bond coverage is no longer required, the period of liability may be terminated.	
BSS Entry	18	<p>Enter into BSS.</p> <p>Enter Action Date: Date default is corrected; DE 2960 AC 485; Action Remarks: Indicate PARTIAL if only partial payment of default is made.</p> <p>Enter Action Date: Date of notification that bond adjustment is required; DE 2960 AC 477; Action Remarks; Enter amount and that bond must be increased to full amount required; pending action required. (FO may have recalculated reclamation costs and increased the required bond amount.)</p> <p>Enter Action Date: Future action suspense date when restoration of bond to required amount is due; DE 2960 AC 247; Action Remarks: Restoration of bond to full amount required.</p>	AUTOMATED NOTATION
Adjudication	19	If the bond is satisfactorily restored to the face amount, See Chapter III, IV, or V according to the type of bond or bond and financial instrument filed. Prepare a decision accepting the bond restoration.	ACCEPTABLE RESTORATION
BSS Entry	20	Enter Action Date: Date bond adjustment is received; DE 2960 AC 464; Action Remarks: Effective date (MM/DD/YYYY).	AUTOMATED NOTATION

Responsible Official	Step	Action	Keywords
Adjudication	21	If personal bond funds collected are less than the total obligation and the principal refuses to pay the remaining obligation, provide a new bond, or to restore the original bond, notify the appropriate FOs and SOs that all bond monies have been collected but are insufficient to cover the total reclamation costs.	FULL PAYMENT NOT MADE – BALANCE DUE
Basic collection methods and approximate time to receive proceeds will vary depending on the type of security, the governing guidance of each security, and the procedures set by the individual financial institutions. As a situation requires, an institution may make an exception to its standard procedures, for example, it may send the funds based only on a fax to be followed by a hard copy original.			COLLECTION METHODS AND AVERAGE TIME VARIANCES
All funds collected are deposited into subactivity 5320 (Repair of Damaged Lands). Complete Form 1310-2; send to contracting or the state budget lead to obtain a project number for purposes of tracking the expenditures associated with the needed reclamation.			REMITTANCE
<u>PERSONAL BOND (Form 3809-2) SECURED BY ONE OF THE FOLLOWING</u>			
Cash – The bond funds, deposited in SO suspense, are transferred to subactivity 5320. Complete Form 1310-2; send form to contracting where a project number is assigned. A contractor is awarded the project and begins the required reclamation work. When the work is completed, the contractor is required to submit an invoice for payment to the BLM office administering the contract.			GUARANTEED REMITTANCE (CASH BOND)
U.S. Treasury Securities – Notify the Negotiable Securities Manager (OC-621) by memorandum of the default and request the Treasury security be sold to obtain the funds needed to cover the default. The Negotiable Securities Manager (OC-621) will coordinate the sale of the security with the Federal Reserve Bank. After the sale, the NOC will transfer the proceeds to the appropriate BLM office’s suspense account.			U.S. TREASURY SECURITIES
Letters of Credit – Prepare a draft for payment and enclose the original security (original not needed for a partial draft), a copy of the executed bond (containing the power of attorney), and the payment draft with the decision for collection (Illustrations 4-6 and 4-7). Follow specific LC instructions and apply UCC language. Payment occurs upon BLM			LETTERS OF CREDIT

Responsible Official	Step	Action	Keywords
		demand – Immediate to 2 weeks.	
		<p>Certificates of Deposit or other Time Deposits – Send collection letter (Illustration 4-14) with the original security (all documents the BLM received from the bank) and a copy of the executed bond which contains the DOI’s power of attorney. (If you have any problems collecting the proceeds, seek assistance from the local bank where your office makes BLM deposits before contacting the Solicitor’s Office. The bank may send the collection on your behalf.) The BLM SO accounts may receive the proceeds electronically (immediate receipt) or by an official bank check (2-3 weeks).</p>	TIME DEPOSITS
		<u>SURETY BOND (Form 3809-1)</u>	
		<p>Surety Bonds – Follow procedures for collection in H-3809-2. Request funds by guaranteed check. A surety company may employ a consulting firm to examine the disturbance and, with the BLM, establish a protocol for reclamation and determine a cost estimate for the required work. Based on the consultant’s estimate of the cost of the required reclamation, the surety will make its decision whether to pay up to the penal sum of the bond or to perform the reclamation. The process may take several months.</p>	SURETY BONDS

CHAPTER XIII – Statute of Limitations**KEYWORDS****A. Background**

The relevant statute of limitations for most bond collection actions is 6 years and is codified at 28 U.S.C. 2415.

STATUTE OF LIMITATIONS FOR COLLECTIONS IS 6 YEARS

Subsection (a) of 28 U.S.C. 2415 provides, in part:

“Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, that, in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment;....”

There are two important reasons for not self-barring further action by an agency to collect debts:

First, under 28 U.S.C. 2415(a), if a debtor acknowledges a debt in writing or makes a partial payment on the debt, the statute of limitations begins to run again. For example, if the BLM, after 7 years, decides to collect a debt owed by Corporation A, it may simply send a bill to Corporation A. If Corporation A acknowledges the debt by payment, partial payment, or by letter agreeing with the bill, then the BLM once again has 6 years to bring an action in court for the payment of any remaining obligations on that debt. In other words, the acknowledgement of the debt causes the statute of limitations in 28 U.S.C. 2415(a) to begin to run again.

DEBT ACKNOWLEDGED AFTER 6 YEARS

Second, the extent of the company’s holdings is a factor. For example, assume that Corporation A is a large, multi-national mining company operating several plans of operations. In all likelihood, that company will pay the bill without question for the following reasons, despite the fact that the statute of limitations prevents the United States from bringing a judicial action to recover the debt:

1. The company wants to maintain its reputation as a “good citizen;” and/or

2. The people in that corporation know they have to do substantial business in the future with the BLM. The corporation does not wish to jeopardize its future working relationship with the agency. For example, under 43 CFR 3809.604(b), the BLM has the authority to require operators who fail to comply timely with noncompliance orders (including any noncompliance order issued as a result of a debt or actions causing a debt to accrue) to file a plan of operations for notice-level activities.

For a contrasting example, assume that a corporation had only one plan of operations with marginal production which ceased production 7 years ago. The corporation is now defunct. Pursuing this debt outside the statute of limitations period is impractical because it is unlikely that the defunct corporation would be concerned with jeopardizing its future relationship with the BLM.

An important factor in determining whether the statute of limitations has indeed expired is contained in 28 U.S.C. 2416(c) which provides, in part:

“...[F]or the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which...facts material to the right of action are not known and reasonably charged with the responsibility to act in the circumstances;...”

**MATERIAL
FACTS NOT
REVEALED BY
ENTITY**

If, for example, Corporation B sends the BLM data showing a debt, and the BLM fails, through lack of budget, neglect, or other reasons, to pursue the debt in court for 6 years, the United States is barred from collecting the debt by an action in court (but not by other means discussed above). If, however, Corporation B conceals the facts that would put the BLM on notice of the debt, then the statute of limitations does not begin to run until the BLM discovers the facts, even if this is many years later.

The difficulty with this statutory section occurs in deciding whether or not the BLM “knew or should have known” of the debt. If the debtor has submitted the correct reports, but the BLM has misfiled them without taking action, then the statute of limitations will most likely have continued to run because the BLM “knew or should have known” of the debt.

**DEBT PURSUIT IN
COURT BARRED
WHEN BLM FAILS
TO ACT ON
KNOWN FACTS**

B. Relationship to Collections Under Bond

If a bond is still active, payment can be demanded under it for deficiencies more than 6 years old. Also, payment can be demanded **after** the period of liability of a bond has been terminated due to the fact that terminating the period of liability of the bond only means that no **new** cause of action may accrue.

A bond is a contract which must be construed in accordance with the terms of the contract and the intent of the parties. Where a bond is given to ensure a statutory obligation, it is known as a statutory bond. The terms of the statute and implementing regulations are considered to be incorporated into and made a part of the contract because the obvious purpose of the bond is to ensure the faithful performance of all obligations and conditions by the person pledging the bond.

When the BLM determines, to the extent that it is able, that the terms and conditions of the bond have been met, it terminates the period of liability of the bond; i.e., it sets a specific time after which no new liability may accrue. This termination of the period of liability by the BLM does not mean that the surety may deny liability for a cause of action accruing **before** termination of the period of liability. For example, Company A closed a plan and performed reclamation that the FO determined was satisfactory. The plan was closed and the period of liability under the bond was terminated in 2010. However, adverse effects of improper closure did not arise until 2016. Company A is liable because the improper closure activities occurred during the term of the bond under the former plan. Company A's surety is also liable because its liability is co-extensive with that of the principal, i.e., the surety is not relieved of liability for improper activities that occurred during the period the bond was in effect, but whose adverse effects do not manifest themselves until after the period of liability of the bond was terminated. Moreover, the applicable statute of limitations would not begin to run until 2016 when the BLM was actually aware or should have been aware of the adverse effects of the improper closure activity.

CHAPTER XIV - Bankruptcy

A. General

If an operator files for bankruptcy, the operator's bankruptcy estate only includes debts incurred before the operator petitioned for bankruptcy. If the operator owes a debt or obligation to the BLM, the BLM may need to file a claim in the formal bankruptcy procedures. However, the BLM may take action against a bankrupt debtor's surety bond since a surety bond is **not** considered part of the bankruptcy estate (refer to Solicitor's Opinion, No. BLM R.M. 0641, Mar. 5, 1986). The BLM must be aware of procedural limitations and requirements from a legal standpoint in order to comply with the Bankruptcy Code and still ensure collection of maximum available amounts under the bond.

This section provides only general guidance regarding the areas of bankruptcy proceedings that concern BLM operations. Coordination between the BLM and the Solicitor's Office whenever an operator declares bankruptcy is essential to protect the Government in bankruptcy proceedings.

1. What is Bankruptcy?

Bankruptcy is a legally declared inability or impairment of an individual or organization to pay creditors. Pursuant to the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 *et seq.*, a debtor may seek an organized liquidation of its debts and business or a restructuring of the debt through reorganization.

When filing a bankruptcy petition, the debtor includes a list of creditors and the debts owed as of the date of the petition. This list of pre-petition debts is a part of the bankruptcy schedules. Generally, an agency's scheduled amount or its claim is an unsecured debt.

When the BLM is notified that an entity has filed bankruptcy, the BLM checks its records to see if that entity has any outstanding obligations to the BLM. If it does, the BLM actively participates in all bankruptcy proceedings because, through bankruptcy, an **under-funded** liability can become an **unfunded** liability literally overnight. Use and abuse of public resources has been reduced because of the BLM's more active role in recovering the costs of reclamation and fees associated with the use of public lands and resources.

The BLM prepares and submits a proof of claim within 90 days after the date set for the first creditors meeting, unless the court sets a different "bar date." The "bar date" is the last date set by the court to receive and to allow proofs of claim to be filed by creditors. If no bar date is established, the government has 90 days within which to file its proof of claim.

Ordinarily the BLM prepares and submits a proof of claim any time a debt is owed the agency unless, in a Chapter 7 case (see below), the court announces the debtor has no assets. The proof of claim can be amended with less difficulty than a scheduled amount can be changed or a late proof of claim can be accepted.

Although the agency may be listed with a scheduled amount, the agency will verify the amount and file a proof of claim for the pre-petition amount through its designated representative (the appropriate Solicitor's Office) before the bar date.

2. What are the objectives of bankruptcy? Bankruptcy proceedings have two primary objectives:
 - a. To give the honest debtor a "fresh start" – return the debtor to full productivity, relieved from burdensome and unmanageable debt; and
 - b. To promote the best interest of the creditors by providing them with an equitable distribution equal to the liquidation value of the debtor's nonexempt assets.

B. Filing Bankruptcy

There are several chapters of the Bankruptcy Code under which an entity may file for bankruptcy. However, the holders of Federal interests will primarily be involved in either a Chapter 7 or a Chapter 11 bankruptcy filing.

1. Chapter 7 - Liquidation or Straight Bankruptcy

A Chapter 7 bankruptcy proceeding is a complete liquidation or dissolution of an individual's or business's estate. A Chapter 7 case may be a case converted from a Chapter 11 if liquidation becomes preferable to reorganization. The bankruptcy court appoints a trustee who is responsible for conducting the business of the debtor's estate during the liquidation process. The assets of the debtor are gathered and sold, and the creditors are paid a pro rata share from the proceeds. Generally, the percentage of the debt returned to the creditor in a Chapter 7 proceeding ranges from 0 to 4 percent.

The bankruptcy court may dismiss a debtor's bankruptcy petition if there are environmental problems or other public health and safety issues that the trustee would be unable to remediate, or if the bankruptcy proceeding would prevent authorities from stepping in to address the immediate problem. If the bankruptcy court dismisses the case, the BLM may proceed with collection and default as discussed in Chapter XII.

2. Chapter 11 - Reorganization of a Business and Restructuring of Debts

Chapter 11 bankruptcy anticipates that the debtor, a business, will continue to exist and operate after the bankruptcy concludes. Chapter 11 provides protection from creditors while the financially distressed business has the opportunity to restructure its finances in an effort to continue its operation and avoid liquidation. The orderly restructuring of the debts of the estate allows the debtor to continue to operate with the assets necessary to do business after its discharge from the bankruptcy proceedings.

In a Chapter 11 proceeding, the court may appoint a trustee to supervise the business affairs of the estate, or the debtor may be allowed to retain control of the activities of the business as debtor-in-possession, overseeing the daily activities of the business.

A Chapter 11 reorganization is intended to provide some return to creditors while enabling the company to be viable again by preserving those assets necessary to carry out the business of the debtor. In many Chapter 11 cases, the debtor will elect to proceed with the notice or plan of operations. It is at this point that the BLM is in its strongest position to get performance or to collect past due monies owed the government **and** to persuade the debtor to condition resumption of the notice or plan on the debtor's timely performance or payment of existing but not yet due obligations. **If warranted for reclamation**, the BLM can increase the required bond amount and the entity must provide the increase as a condition of resuming the mining operations.

C. Agency Discrimination Against Debtor Prohibited

Under 11 U.S.C. § 525(a), the BLM may not discriminate against operators who have filed for bankruptcy or treat them in a substantially different manner simply because they have been or are in bankruptcy. For example, the BLM may not reject a notice/plan or impose other penalties solely because the operator has filed bankruptcy, is insolvent, or has not paid a debt dischargeable under the Bankruptcy Code. Also, the BLM cannot disapprove a new project to a company simply because it is or has been in bankruptcy, since the purpose of bankruptcy is to give the debtor a "fresh start." Pending offers, applications for approval, etc., will be processed in the ordinary course of business; non-approval solely by virtue of the bankruptcy is prohibited.

Although 11 U.S.C. § 525(a) protects debtors from discriminatory treatment, it does not relieve them from otherwise applicable regulations. In other words, the BLM is not required to approve operations or refrain from imposing penalties on those who have been or are in bankruptcy if other factors are involved in reaching a particular decision that are not based on insolvency or the fact that a debtor has filed for bankruptcy protection. The Bankruptcy Code does not prohibit consideration of other factors such as future financial responsibility or ability, and does not prohibit the imposition of future requirements, if applied equally to those who are not in bankruptcy.

Thus, a plan may terminate by its own terms, or suspension may occur by debtor's failure to post additional required bonding, during the course of the bankruptcy proceeding, and go into a site closure mode. The Authorized Officer does have the regulatory authority to set the bond amount or to require an increase in the bond amount whenever it is determined that reclamation exceeds present bond amount or to prevent unnecessary or undue degradation of public lands as determined by the BLM.

However, if the agency cannot grant approval or determines that a bond must be increased or that a plan must be terminated, **before taking any adverse action**, you must consult with the BLM SO bankruptcy coordinator who will consult with the Solicitor's Office.

D. Automatic Stay

The petition date is the date the debtor files for bankruptcy. The significance of the filing of a bankruptcy petition is that the filing institutes an automatic stay under 11 U.S.C. § 362(a) that prevents or stops all monetary collection efforts or acts to regain possession, as well as related litigation that was or could have been commenced before the debtor filed the bankruptcy case.

The automatic stay is applicable against all entities including agencies of the U.S. Government. However, the automatic stay does not apply to a governmental unit's actions to enforce its police or regulatory power or to enforce a judgment (other than a monetary judgment), even if compliance would require expenditure of money by the debtor. Thus, the government's costs in cleaning up environmental obligations are considered an administrative claim not barred by the automatic stay, as are actions to enforce a governmental police or regulatory power if that governmental action is taken to protect public health and safety. By contrast, courts may deny a purely pecuniary claim for reclamation expenses resulting from pre-petition conduct. In addition, if the regulator attempts to take possession of or exercise control over property of the estate, then the stay applies and permission must be granted by the bankruptcy court before further action may be taken by the regulator.

Property of the estate includes approvals under 43 CFR subpart 3809. In general, revocation of the license by the regulator eliminates or reduces the value of an asset of the estate, which the courts see as an act to obtain control over the property of the estate and barred by the automatic stay. However, because the 3809 permit is conditioned on the continued compliance with statutory and regulatory requirements, any action by the BLM to bring the debtor into compliance with applicable law does not violate the stay because otherwise the debtor could operate a facility despite noncompliance with applicable regulations.

Consequently, with respect to a 3809 operation, the BLM must ensure that any action it takes will not be seen simply as an action to take control or possession of an asset of the bankrupt operator's estate (including a permit), because such actions will be deemed stayed by 11 U.S.C. § 362(a). The BLM may, however, suspend operations, reject a plan or plan amendment, or issue a notice of noncompliance if the BLM is enforcing a regulatory requirement applicable to other operators. If the action is taken to enforce the BLM's regulatory power to protect public health and safety, then the BLM may proceed without requesting relief from the automatic stay provisions under section 362(a). In other words, the BLM may enforce the regulations, issue notices of noncompliance, or take direct action to force the debtor to abate the violation pursuant to the normal timeframes for infractions that occurred prior to the bankruptcy filing without fear of violating the automatic stay. Penalties and assessments or fines and damage calculations may be made. If the BLM corrects the violation itself, it may subsequently bill the debtor for the cost of abatement. Actual collection of money may not be allowed because enforcement of a money judgment would give the United State a preferential treatment to the detriment of other creditors. The BLM will assert these costs as administrative claims, but to the extent in excess of an existing bond, the costs may be treated no differently than any other unsecured debt filed by a creditor in the bankruptcy proceeding.

E. Creditor Treatment of Pre-petition and Post-petition Claims

1. Pre-petition Claims

Pre-petition claims arise before the bankruptcy petition is filed, including the date of filing, and are discharged as part of the bankruptcy proceedings. The BLM files a proof of claim in the bankruptcy court for the pre-petition debts before the bar date. The BLM's best defense is that the BLM has done its job in reviewing the anticipated surface disturbance under the notice or plan, adequately estimating the cost of reclamation for the surface disturbance, and ensuring satisfactory bonding is in place prior to the operator beginning operations and surface disturbance.

The automatic stay prevents the BLM from taking any action "to collect, assess, or recover a claim against the debtor that arose before the filing; and "to setoff of any debt owed to the debtor that arose before" the filing. The **BLM cannot ask for money from the debtor or refund any money to the debtor for BLM business that occurred before the bankruptcy case was filed.** This provision, which ensures all monetary claims are adjudicated in the bankruptcy court, was implemented to ensure the bankruptcy is an orderly process, safeguard the assets of the bankrupt estate, and to ensure fairness among creditors.

2. Post-petition Debts

Post-petition debts arise after the bankruptcy petition is filed. Debt collection procedures for post-petition activities are the same as those to be used for non-bankrupt companies. However, debts not paid in full by the operator will be referred to the Solicitor's Office for action.

The BLM will continue to enforce the regulations against the operator. For example, remedial action may be sought after the bankruptcy petition is filed. Standard timeframes may be employed for correction of both pre-petition and post-petition violations of operational requirements.

Post-petition debts are important to the success of a Chapter 11 reorganization plan being accepted. In order to allow a debtor to function during reorganization, "the actual, necessary costs and expenses of preserving the estate" during reorganization are considered to be expenses of administering the estate and are paid first (11 U.S.C. § 503(b)). This provides **adequate protection** for creditors. Post-petition expenses are administrative claims, but subordinate to rights of secured creditors in their collateral. A valid reorganization plan must normally provide for satisfaction in full, in cash, at the time of confirmation, of any unpaid administrative expenses. This includes penalties for post-petition violations.

F. Collection of Bonds from Debtor

As previously stated, the BLM may enforce regulatory requirements without seeking relief from the automatic stay and without violating the prohibition on discriminatory treatment if certain requirements are met. If the regulatory decision is not made solely upon the fact that the debtor has filed for bankruptcy protection, if the action is taken to protect human health and the environment, and if the BLM is not seeking control or possession of the property of the estate but

is taking the action in order to bring the debtor into compliance with applicable law, then the action by the regulator will not be found to discriminate against the debtor and will not be subject to the automatic stay.

The BLM can demand payment from the surety without going through the bankruptcy court, since the surety's obligation runs straight to the government and the bond is not property of the debtor's estate. The BLM, as beneficiary of the bond, may seek payment of the bond from the surety company without violating the automatic stay. It is important that the BLM copy the surety on actions taken against the operator. Follow the required regulatory procedures and give prompt notification of operational infractions, notices of noncompliance, and written orders. In liquidation under Chapter 7, the notices and orders to the operator may be futile, unnecessary, and cost environmental time. The BLM may deal directly with the surety. Adjudication takes the lead to demand payment under the bond.

The automatic stay does not preclude direct action against sureties, insurers, or co-principals (assuming the co-principal is not also part of the bankruptcy proceeding). The general rule is that a surety's obligations to the beneficiary are independent and primary, not derivative of those of the debtor. As such, a surety bond is not property of the estate of the debtor and the automatic stay does not apply between the surety and the beneficiary. Consequently, even in situations where the surety has recourse against collateral pledged by the debtor, the bankruptcy proceeding does not prevent the beneficiary of the bond (BLM) from calling the obligation due.

G. Liquidation of a Surety Company

As discussed in Chapter III, the Secretary of the Treasury is authorized to determine the qualifications of a surety company and to certify a surety company as acceptable to underwrite bonds for the U.S. Government. In that capacity, the Secretary of the Treasury also reviews and removes the surety company when its qualifications do not meet requirements. A surety company may lose its certification to underwrite bonds for the Federal Government but may continue its business for purposes other than the Federal Government. Surety companies are "decertified" either for "new" bonds with the BLM or also including "existing" bonds held by the BLM. In either instance, the BLM must carefully review the outstanding liabilities under the bonds accepted from the decertified companies and determine if requiring replacement bonds are to the BLM's benefit (if the surety was decertified only for new bonds) or all bonds need to be replaced (if the surety was decertified for existing bonds).

The Treasury Department will also report when a surety company is liquidating, either voluntarily or involuntarily, if that surety has not already been removed as a certified surety. See Chapter III of this handbook for more about the Treasury's role and responsibilities and how to find updated information about a surety's certification.

H. Bankruptcy Roles and Responsibilities of Various Personnel

1. Bankruptcy Coordinator. Each BLM SO, Washington Office, and Office of Natural Resources Revenue (ONRR) (previously a part of the Bureau of Ocean Energy Management) has a Bankruptcy Coordinator. Those people are the first points of contact

for any bankruptcy case where the BLM is or might be a creditor. The bankruptcy coordinator maintains filings and status of the bankruptcy cases; works with the Solicitor's Office, BLM FOs, other SO personnel, and ONRR etc. to identify, gather, or organize substantive evidence to support a claim; and may assist with gathering information for pleadings, notices, and proofs of claim in court. BLM Adjudication takes the lead to demand payment under the bond in consultation with the Solicitor's Office. If you receive bankruptcy-related documents, send them to the SO Bankruptcy Coordinator as soon as possible.

2. Office of the Solicitor. The Office of the Solicitor works with SO bankruptcy coordinator and FO specialists on proofs of claim and problems. The Solicitor works with the U.S. Department of Justice and/or U.S. Attorney in the development of the strategy employed before the court. No action will be taken against the bond or the bankrupt party without Solicitor consultation and concurrence.
3. Department of Justice and U.S. Attorney's Office. The Department of Justice and U.S. Attorney's Office represent all government agencies before Federal courts and coordinate possible reclamation/environmental issues. Bankruptcy Rule 2002(j)(4) provides that, if the papers disclose a debt to the U.S. government other than for taxes, the debtor must notify both the U.S. Attorney for the district in which the bankruptcy is pending and the department, agency, or instrumentality through which the debtor became indebted. Notice given to the appropriate agency but not to the United States Attorney is defective.

I. Procedures for Collecting Pre-petition Debts Under Bankruptcy

Upon receipt of notification of the filing of a bankruptcy petition by a debtor, the BLM will notify the designated bankruptcy coordinator of ONRR so that other resource interests held by the operator or claimant may be reviewed for defaults and so that the financial account status of a payor may be reviewed for pre-petition and post-petition amounts that may be owed. If an agency discovers a bankruptcy proceeding for which it is **not** receiving notification by the bankruptcy court, but in which it believes it has an interest, the agency will contact the appropriate Solicitor's Office immediately to request preparation of an agency request for notice and notice of appearance.

Currently, ONRR produces a quarterly listing that shows entities involved with the Federal mineral leasing and mining programs that have filed for protection under the bankruptcy laws. The mining bankrupt entities are shown in Section II of the ONRR listing.

Adjudication will order an LR2000 report to determine those interests held by each entity involved in the bankruptcy or listed on the ONRR list. Other records, not maintained in LR2000, may need to be reviewed to determine an entity's business dealings with the BLM.

The BLM will request reclamation/rental reports from the FOs having jurisdiction over the operations, leases, communication sites, contracts, etc. identified in LR2000.

Also, as necessary, request the BLM FOs to review other records contained in their offices. The FOs are to immediately advise the SO Adjudication of any claims against the bankrupt party,

including an itemization of costs separated by pre- and post-petition. The amount to be claimed will include assessments; penalties levied; unbonded costs; and estimated costs if the operator were to abandoned the site the next day; estimated costs to maintain the site between when the operator leaves and the BLM has received the funds under the bond; estimated costs to maintain the site until the BLM gets the funds to start reclamation; costs to remove buildings and trash; costs to secure the site for public health and safety; and estimated costs to reclaim the site above the value of the bond, etc.

Upon discovery of defaults in the operations, evidence of the debt will be compiled and the appropriate Solicitor's Office will be notified by memorandum with the necessary documentation attached. It is important that **no action against the bond be taken without concurrence from the Solicitor handling the proceeding.**

The appropriate Solicitor's Office coordinates with the BLM SOs and the Department of Justice concerning presentment of proofs of claim and other bankruptcy problems.

Some BLM offices need only provide additional information as required by the Solicitor's Office while other BLM offices will additionally prepare a draft proof of claim for filing in the bankruptcy court.

J. Completing the Proof of Claim

1. Always use the proof of claim form provided by the court for the case.
2. If the court does not specify a proof of claim form, obtain a B10 (Official Form 10) (version April 98) from the clerk of the bankruptcy court, U.S.C.A. Title 11, or a legal forms website.
3. If you have too much information to present it neatly on either form mentioned above, submit a narrative proof of claim attached to the specified form and attach exhibits as needed.

The bankruptcy may include co-debtors of which one or more may be in debt to the BLM. Separate claims will have to be prepared and submitted for the separate entities.

K. Items Required for Proof of Claim

1. Basis for claim. Always use 'Other' and generalize the grounds for liability. For example, the basis of the claim may be environmental, public health and safety, mineral materials trespass, surface reclamation or conservation of natural resources. What is the nature of the default or debt? Is the debt a violation of safety or environmental law, noncompliance with lease terms, or a failure to pay money, like rents, royalties, bonus bid payments, grazing fees.
2. Date debt was incurred. The date the debtor was obligated to pay the BLM money, e.g., the date of issuance of authorizations, permits, or rights-of-way; the date the bid form was

signed; the date a mining notice was filed; the date a plan of operations was approved; or the date that was approved to perform an action such as reclamation.

3. If there was a court judgment, include the date obtained, as well as any decided or pending litigation between the BLM and the debtor, including IBLA decisions which have been rendered.
4. Total amount of claim at the time the case filed. All documentation such as contracts, bid forms, leases, etc., must clearly identify the debtor and support the claim and the amount claimed.
5. Types of Claims.
 - a. Unsecured Claim – No lien, no collateralized debt. Additionally, to the extent a claim exceeds the value of the collateral (under a secured claim), the remainder is an unsecured claim.
 - b. Secured Claim – Creditor has a lien against property of the debtor to secure payment of a debt or performance of an obligation. Creditors holding secured claims receive either their collateral or the full value thereof before any payment can be made to satisfy an unsecured claim. To the extent there is sufficient collateral, the creditor may receive interest, attorney’s fees, and other expenses. Amount for which a bond that has been accepted is secured. Show as a secured portion of the debt owed even though a surety is bound to the United States up to the amount of the bond if the obligations are unfulfilled by the principal.
 - c. Priority Claim – 11 U.S.C. § 507(a)(1)-(8). Administrative expenses permitted by the Code. Penalties of governmental units (11 U.S.C. § 507(a)(6)) **only** if a bill was issued. Check with your Solicitor for a determination of whether the identified post-petition debts can be classed as administrative expenses.
6. Credits. Show the amount of payment made on the claim that has been credited and deducted from the claim.
7. Supporting Documents. The documents on which the claim and amounts in the claim are based, e.g., the plan of operations, trespass notice, bill for collection, etc. are a part of and must accompany the proof of claim. Documentation which provides the BLM guidance and authority to assess liability at specific amounts.

L. Normal Order of Payments Made by the Court

The normal order of payments made by the court is as follows:

- Attorneys
- Taxes
- Debts incurred while in bankruptcy (post-petition)

Secured claims
Unsecured claims

CHAPTER XV – Stock Raising Homestead Bonds

Congress enacted Public Law 103-23 on April 16, 1993, amending the Stock Raising Homestead Act of 1916 (SRHA). The 1993 amendment to the SRHA defines procedures with which individuals or companies must comply before locating mining claims on split estate lands where the surface was patented under the SRHA and the minerals are reserved to the United States.

Under 43 CFR 3838.11, prior to locating mining claims on SRHA lands, the claimant must record with BLM Form 3830-3, Notice of Intent to Locate Lode or Placer Mining Claim(s) and/or Tunnel Site(s) on Lands Patented Under the Stock Raising Homestead Act of 1916, as Amended by the Act of April 16, 1993 (NOITL), pay the full processing fee, and comply with all other requirements stated in the regulations.

Under 43 CFR 3809.31(d), after the mining claims are located, a mining claimant or operator may not conduct mineral activities (other than casual use) except with (1) written consent from the surface owner(s), or (2) an approved plan of operations from the BLM, including compliance with the financial guarantee requirements in 43 CFR 3809.500.

If the surface owner(s) give written consent, then the operator may begin mining activities without submitting a plan of operations or providing a bond or financial guarantee to the BLM. However, the operator must comply with the provisions of 43 CFR subpart 3814.

Absent written consent, the operator must file a plan of operations for any mining activities other than casual use in the appropriate BLM FO pursuant to the guidance at 43 CFR 3809.

The bonds and financial guarantees for operations on SRHA lands will be processed and maintained as the guidance provides in the preceding chapters of this BLM Manual Handbook H-3809-2, including entry of the bonds in the Bond and Surety System, and in accordance with any individual BLM state manual supplements.

The “Mining Claims on Stock Raising Homestead Lands” User Guide (Third Ed., November 2001) provides complete guidance on processing mining claims on Stock Raising Homestead lands.

Appendix A – Chart of Bond Authorities

The chart on the following pages shows the different authorities that allow the BLM to require bonds in the various resource programs. The chart also gives the applicable CFR cite for the regulations authorizing the bonding, the bond amounts, and the allowable instruments that may be used to secure a bond in each resource program.

H-3809-2 – SURFACE MANAGEMENT BOND PROCESSING (Public)
Bonding Authorities

Program Activity	Lead Agency- Authority	Bond Amount	Allowable Bond Instruments
Rights-of-Way	Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761-1771) BLM - 43 CFR 2800	As determined by Authorized Officer (AO)	Surety Bond Personal Bond Secured by: <ul style="list-style-type: none"> • Cash • Book Entry Deposits (also known as US Treasury Securities)
Oil & Gas Leasing	Mineral Leasing Act of 1920 (30 USC 241, 237) BLM - 43 CFR 3100 MMS - 30 CFR 234 Stock Raising Homestead	NLT* \$150,000 (Nationwide) NLT \$ 25,000 (Statewide) NLT \$ 10,000 (Lease) NLT \$ 5,000 (Permit)	Surety Bond Personal Bond Secured by: <ul style="list-style-type: none"> • Certificate of Deposit • Cashier's Check • Certified Check • US Treasury Securities • Irrevocable Letter of Credit
Geothermal Leasing	Energy Policy Act of 2005 (42 USC 15801); Geothermal Steam Act of 1970 (30 USC 1001, 1023) BLM - 43 CFR 3200	NLT \$150,000 (Nationwide) NLT \$ 50,000 (Statewide) NLT \$ 10,000 (Lease) NLT \$ 5,000 (Permit)	
Agreements on Indian Lands (Leasables)	Indian Mineral Development Act of 1982 (25 USC 2101, 2107) BIA - 25 CFR 225.30	\$150,000 (Nationwide) \$ 75,000 (Statewide)	
Coal Management Exploration License, Lease, Logical Mining Unit Reclamation	Mineral Leasing Act of 1920 (30 USC 201) BLM - 43 CFR 3400 OSM - 30 CFR 800 (Part J)	As determined by the AO but NLT \$5,000 As determined by the AO * Not less Than	Surety Bond Personal Bond Secured by: <ul style="list-style-type: none"> • Cash • US Treasury Bonds Corporate Surety Collateral Bond Self Bond (combination of the above)

H-3809-2 – SURFACE MANAGEMENT BOND PROCESSING (Public)
Bonding Authorities

Program Activity	Lead Agency Authority	Bond Amount	Allowable Bond Instruments
<p>Solid Mineral Leasing, Other Than Coal (Phosphate, Sodium, Potassium, Sulfur, Gilsonite, Hardrock [Acquired Lands Only])</p> <p>Statewide, Nationwide, Permit, Lease for all of the above</p>	<p>Mineral Leasing Act of 1920 (30 USC 211, 241, 261, 281, 271) BLM - 43 CFR 3500</p>	<p>NLT* \$75,000 (Nationwide) NLT \$25,000 (Statewide) NLT \$ 5,000 (Lease) NLT \$ 1,000 (Permit)</p>	<p>Surety Bond Personal Bond Secured by:</p> <ul style="list-style-type: none"> • US Treasury Bonds • Cash • Cashier's Check
<p>Leasing of Tribal Lands for Mining</p>	<p>25 USC 391, 396c BIA - 25 CFR 211.6</p>	<p>\$75,000 or as set by AO (NW) \$15,000 or as set by AO (SW) NLT* \$ 1,000 (< 80 acres) NLT \$ 1,500 (> 80 < 120 ac) NLT \$ 2,000 (>120 < 160 ac) NLT \$ 2,500 (> 160 acres)</p>	<p>Surety Bond Personal Bond</p> <ul style="list-style-type: none"> • Secured by U.S. guarantees <p>Ownership of unencumbered real estate equal to twice the liability</p>
<p>Mineral Material Sales</p>	<p>Materials Act of July 31, 1947 (30 USC 601) BLM - 43 CFR 3600 USFS - 43 CFR 228.5, 1, Part C</p>	<p>For contracts of >\$2,000, performance bond required sufficient to meet reclamation standards <u>but</u> NLT \$500</p> <p>For contracts <\$2,000 optional</p>	<p>Surety Bond Personal Bond Secured by:</p> <ul style="list-style-type: none"> • Certificate of Deposit • Cash • Irrevocable Letter of Credit • US Treasury Securities
<p>Mining Law Minerals</p>	<p>Federal Land Policy & Management Act of 1976; Mining Law of 1872 (43 USC 1701, 1733) BLM - 43 CFR 3802 & 3809 USFS - 36 CFR 228.13</p> <p>PL 103-23; BLM – 43 CFR 3814</p>	<p>As determined by AO in an amount to cover 100% of the estimated reclamation costs as if BLM were to 3rd party contract</p> <p>Nationwide, Statewide, Individual for notice-level operations and plans of operations</p> <p>As determined by AO to protect surface owner from surface damage & loss of use * NTL - Not Less Than</p>	<p>Surety Bond Personal Bond Secured by:</p> <ul style="list-style-type: none"> • Cash, Certified Funds • Irrevocable Letter of Credit • Certificate of Deposit • US Treasury Securities <p>Evidence of a State-held Bond State and Municipal bonds* Investment-grade securities* Insurance* *As of 01-02-2009: No adjudicative guidance exists for the instruments</p>

Appendix B – Bonding and Bankruptcy Definitions

A. Bonding Definitions

Agent - A person (agent) who has the legal authority to act for another person or business entity.

Articles of Incorporation - The document that governs the management of a corporation and defines its government. Articles of incorporation are required to be filed with the Secretary of State in which the corporation is formed.

Assignment/Transfer - A conveyance of all or a portion of interest from one entity to another. The BLM will not recognize an assignment or transfer unless it is in writing and filed with the BLM.

Assumption Rider - Bond attachment/addendum that assumes the outstanding liabilities under a prior bond. A separate assumption rider is not needed for bonds accepted to cover mining operations conducted under 43 CFR 3809 because the assumption language is built into the bond contracts Forms 3809-1 and 3809-2. In addition, Form 3809-5, is a Notification of Change of Operator and Assumption of Past Liability and contains adequate language of assumption. See Chapter V for more information on riders.

Authorized Officer (AO) - Any employee of the BLM who has been delegated the authority to take certain actions.

Blanket Bond - Referred to as a blanket financial guarantee and can be used to cover statewide or nationwide operations instead of individual financial guarantees for each operation.

Bond & Surety System - (BSS) A BLM database for collecting, storing, and retrieving information about surety companies, bond principals, and bonds.

Bond - A written agreement in which the operator, a surety, or another party guarantees performance in the event of operator default (reclamation or royalties) or a party provides collateral for security by an operator.

Certificate of Deposit - (CD) Written acknowledgment by a bank specifying that a certain amount of money has been deposited in the bank in an interest-bearing account for a specified period of time. One form of a **Time Deposit**. See Chapter IV for more information.

Certified Funds - Guaranteed check which is the obligation of the bank on which it was drawn; a warranty that sufficient funds are on deposit.

Co-Principal - Under bond, additional principal(s) for whom the bond provides equal coverage.

Consent of Surety - A written acknowledgement by a surety (either on BLM form 3809-4 or the surety's own form) that its bond continues to apply to a modification of the plan or other contract for which it was given. See Chapter III.

Corporate Surety Bond - A bond executed by a surety corporation that has been approved by the U.S. Department of Treasury as an acceptable surety for federal bonds.

dba - Acronym for the business arrangement "doing business as." A dba entity is not a "stand alone" entity under most state laws. See Chapter II.D of this handbook for more about a dba entity associated with operations and a bond under 43 CFR 3809.

Decertified Surety - The state of a surety whose certificate of authority to provide a bond to the U.S. Government has been revoked or terminated by the U.S. Department of the Treasury.

Default - Generally defined as the omission or failure to perform a legal or contractual duty or to observe a promise or discharge an obligation such as to pay interest or principal on a debt when due.

Executory Contract - A contract in which the performance by one or more parties has not been completed. Example: The BLM contracts with Company A to buy 100 pencils. The contract remains executory until the company delivers the pencils and BLM pays for them.

Guaranteed Remittance - See certified funds.

Instrument - A formal or legal document in writing, such as a contract, deed, will, bond, or lease.

Irrevocable Letter of Credit - A document issued by a financial institution that promises to pay to a beneficiary upon satisfaction of the terms within the letter of credit, including requesting payment by a certain date. Irrevocable letters of credit may be used to secure a personal bond, but revocable letters of credit may not (see Chapter IV). A letter of credit is deemed irrevocable if not titled "revocable" letter of credit.

Negotiable Treasury Securities - Bonds, notes, and bills the principal and interest of which are guaranteed by the Federal government and may be used as a bond for mining operations conducted under 43 CFR 3809. The National Operations Center handles all negotiable Treasury securities accepted by the BLM for all bonds. See Chapter IV.E.

Nationwide Bond - Bond which provides coverage for specific program operations in more than one state.

Negotiable Instrument - A written and signed unconditional promise or order to pay a specified sum of money to the bearer on demand or at a definite time.

Notice of Noncompliance - (NON) Issued under 43 CFR 3809.400 for failure to comply with regulatory requirements or otherwise causing unnecessary and undue degradation of the lands. An operator with an unresolved notice of noncompliance has established a record of noncompliance.

Obligee - In the context of a personal bond, the entity to whom a bond is given.

Obligor - The operator, bond principal, or party furnishing the bond.

Par Value - The face or stated dollar value of a security. If the par value and the price paid are the same, the instrument is said to be selling "at par." If the price paid is lower or higher than the par value, then the instrument is said to be selling "below par" or "above par," respectively.

Penal Sum - The sum agreed upon in a bond, to be forfeited if the condition of the bond is not fulfilled.

Performance Bond - Type of surety bond which protects against loss due to inability or refusal of a party to perform its contract.

Period of Liability - (POL) The time of responsibility under a specific bond.

Personal Bond - A contract between the principal (operator) and the BLM that is secured by personal funds (such as an irrevocable letter of credit, negotiable treasury securities, or guaranteed remittance) as security.

Power of Attorney - (POA) An instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts on behalf of principal. With respect to bonds, a POA is given by a surety company to allow an attorney-in-fact to sign the bond.

Principal - Party that is liable for an obligation and for whom a surety has become bound for the performance of that obligation.

Quitclaim Deed - A deed of conveyance that passes only the title, interest, or claim that the grantor may have in the property, but not containing any warranties that the grantor does in fact own any title or interest in the property.

Reclamation - Taking the measures required by BLM regulations following disturbance of public lands caused by mining operations to meet performance standards and achieve conditions required by the BLM at the conclusion of operations in the operator's plan of operations. See the complete definition and components of reclamation at 43 CFR 3809.5.

Record of Noncompliance - See Notice of Noncompliance.

Replacement bond - Substitute coverage submitted to replace a bond currently in place.

Statewide bond - A bond which provides for the reclamation of more than one operation under an approved plan of operations and/or notice on public lands within a single state. The pledged amount of a statewide bond is adjusted as needed for the cost of reclamation of all plans of operations and/or notices covered by the statewide bond.

Statute of Limitations - A law or regulation setting the maximum time period after which no legal action can be brought to enforce rights, except in certain limited circumstances. Note that the statute of limitations does not preclude the BLM from attempting to enforce its rights outside the courts.

Surety - One who at the request of another agrees to be responsible to a third party for performance or payment.

Surety company - An incorporated business entity which serves as a surety for a fee.

Time Deposit - An interest bearing account at a bank or other financial institution secured by a cash deposit for a specified term. A certificate of deposit is a time deposit account.

Uniform Commercial Code - (UCC) A code drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws which includes the sale of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, documents of title, investment securities, and secured transactions. UCC is a series of model statutory provisions drawn up to encourage states to voluntarily incorporate these provisions into their own state statutes to provide a uniform set of legal principles that would facilitate commercial transactions among persons in different states. Most states have adopted or incorporated the UCC. The UCC is complementary to the UCP.

Uniform Customs and Practice for Documentary Credits - (UCP) The UCP is not a law but is internationally recognized by all banks as the set of rules governing letters of credit. UCP is cited as the standard in all legal references.

B. Bankruptcy Definitions

Assumption of an Executory Contract or Unexpired Lease - A method provided by the Bankruptcy Code for use by the debtor-in-possession or trustee to accept or refuse lease or executory contract upon cure of defaults and provision of adequate assurance of future performance.

Automatic Stay - Upon the filing of the bankruptcy petition, the preclusion of any effort by a creditor to satisfy a claim. A protection to the debtor in bankruptcy as it reorganizes or liquidates, prohibiting any separate proceeding, lawsuit, or action to pursue a claim that

accrued **prior to** the filing of the bankruptcy petition. See 11 U.S.C. § 362. Does not apply to exercise of “police powers” to protect public health and safety.

Bankruptcy - A legally declared inability to pay creditors.

Bankruptcy Code - U.S. Code Title 11 – Bankruptcy.

Bar Date - The date set by the bankruptcy court beyond which it will not accept or allow proofs of claim filed by creditors, with limited exceptions.

Chapter 7 - The portion of the Bankruptcy Code that governs the process of liquidating the debtor’s assets.

Chapter 11 - The portion of the Bankruptcy Code that permits a business organization to reorganize while paying debts.

Claim - (A) Right to payment, whether or not such right is reduced to judgment, liquidated or unliquidated, fixed, contingent, matured or unmatured, disputed or undisputed, legal, equitable, secured, or unsecured; or

(B) Right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Creditor - (A) Entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) Entity that has a claim against the estate of a kind specified in section 348(d), 502(g), 502(h), or 502(i) of 11 U.S.C. See Secured Creditor. (Non-bankruptcy definition)

Debt - Defined under the Bankruptcy Code as “liability on a claim.”

Debtor in Possession (DIP) - Under Chapter 11, the debtor administers the bankruptcy estate unless a trustee has been appointed to serve in the case (11 U.S.C. §1101(1)).

Debtor - In bankruptcy, a party for or against whom a case has been filed (11 U.S.C. §101(13)).

Discharge - The bankruptcy court’s release of a debtor from debts.

Insolvent - In the normal course of business, the state of an entity’s financial condition when it is unable to pay debts as they become due, or when the sum of debts is greater than aggregate of property, at fair valuation.

Liquidation - Sale of all assets of the bankruptcy estate by the trustee in a Chapter 7 case (11 U.S.C. § 701-766).

Person - For bankruptcy purposes, a “person” is an individual, a partnership, or a corporation, but does not include a governmental unit (11 U.S.C. § 101(41)).

Bankruptcy Petition - The document filed by the debtor to initiate a voluntary bankruptcy proceeding or by creditors to initiate an involuntary bankruptcy case.

Plan of Reorganization - The document filed by the debtor in certain bankruptcy proceedings that sets forth the financing and structure for payment to creditors by the debtor.

Post-petition - The time period after the filing of the bankruptcy petition, including the date the petition is filed.

Pre-petition - The period of time prior to the filing of the bankruptcy petition.

Proof of Claim - Statement filed in a bankruptcy proceeding by a creditor in which the creditor states the nature and amount of the claim.

Receivership - A state court proceeding in which a fiduciary is appointed to hold in trust and administer property that is in litigation.

Rejection of an executory contract or unexpired lease - A method provided by the Bankruptcy Code for use by the debtor-in-possession or trustee to escape from the outstanding financial and legal obligations under an executory contract or unexpired lease.

Reorganization - The term for the restructuring of the debtor’s business under Chapter 11 of the Bankruptcy Code.

Schedules - Forms used by the court to list debtor’s property, creditors, income, expenditures, etc.

Secured claim - The claim of a creditor holding a lien against property of the estate.

Secured creditor - One with a security interest in property of the debtor or a bond for satisfaction of its debts, such as a mortgage, collateral, or a lien.

(Bankruptcy) Trustee - A person appointed by Bankruptcy Court to hold legal title to the property of the debtor in order to collect assets, to bring suit on claims, and to defend actions against the estate.

United States Trustee - (US Trustee) A person appointed by the Attorney General of the United States to oversee the progress of bankruptcy cases and to appoint and supervise the private trustees. The United States Trustee may recommend that the bankruptcy court dismiss a debtor’s (operator’s) bankruptcy petition if there are environmental problems or other public health or safety issues that the bankruptcy proceeding would hinder or prevent.

Unsecured claim - A claim that is not protected by a lien on property.

Appendix C – Helpful Websites for Bond Adjudication

Personal Bonds

US Treasury book entry deposits www.frbsservices.org
FDIC Verification <http://www.fdic.gov>
Credit Unions <http://www.ncua.gov>

Surety Bonds

Circular 570 (Financial Management) <http://www.fms.treas.gov/c570/index.html>
Title 31 - Treasury <http://www.gpoaccess.gov/cfr/index.html>

Bankruptcy

American Bankruptcy Institute <http://www.abiworld.org>
Nationwide Bankruptcies <http://pacer.uspci.uscourts.gov>

General Adjudication

Federal Court System <http://www.uscourts.gov/Home.aspx>
Finding case law (Cobell only) <http://web.lawcrawler.com/>
U.S. Court of Appeals (Ninth Circuit) <http://www.ca9.uscourts.gov/>
CFR <http://www.gpoaccess.gov/cfr/index.html>
Federal Register <http://www.gpoaccess.gov/fr/index.html>
State Corporation Search [http://sos.state.\(2-letter name of state\).us](http://sos.state.(2-letter name of state).us)
(limited states included)
Public Land Orders
http://www.blm.gov/wo/st/en/prog/more/lands/public_land_orders.html
Plain Language guidelines <http://www.plainlanguage.gov>
Track Federal Express Delivery www.fedex.com

Appendix D – Illustrations

Illustration 1-1 – Information Letter for Surface Management Bonds (I.I)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
(LETTERHEAD - ADDRESS)

3809 (Office Code)

Dear Requestor:

In response to your request for information regarding bonds (financial guarantees) for federal Notices and Plans of Operations, we enclose (*current bond forms, Frequently Asked Questions brochure, information about surety bonds, negotiable U.S. Treasury securities, letters of credit, certificates of deposit, sample letter of credit, the current regulations regarding federal surface management requirements, etc.*). Additional information may be downloaded from the BLM Washington or state office websites.

Under the Bureau of Land Management's regulations, the amount of financial guarantee the operator needs to provide must be a minimum of the estimated cost of reclaiming the surface (reclamation cost estimate) proposed for disturbance as furnished by the operator in the Notice or Plan of Operations and as reviewed and determined by the BLM in conjunction with any cooperating agencies. The operator's estimated cost of reclamation will be or has been reviewed and determined by the BLM field office (*or other authorized office*) where the Notice or Plan of Operations was filed. If you need information about the reclamation cost estimate, please contact the BLM field office where your proposed operation is located or where you filed the Notice or Plan of Operations.

A satisfactory bond is required to be accepted by the BLM prior to any surface disturbance for operations to be conducted under the regulations at 43 CFR Part 3809. The original bond and any financial instrument, if a personal bond, must be submitted to the BLM at the following address:

NAME OF THE BLM OFFICE
PO BOX and STREET ADDRESS
CITY, STATE ZIP

The bond, or the bond and financial instrument, will be examined and you will receive a Decision accepting the bond or a Notice for correction of the documents. If you need further information about the bonding instruments, you may contact the BLM Public Room/Information Access Center (*or whatever is appropriate for your state, e.g., adjudication section, bond staff, land law examiner, etc.*) at telephone (*insert phone number*). Or you may contact us through the Internet at [www.\(state code\).blm.gov](http://www.(state code).blm.gov). or the fax number of _____.

Sincerely,

Authorized Officer

Enclosures

Illustration 3-1 – Unacceptable Surety Bond
(III.C.4d(7))

3809(Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL

NOTICE

Obligor:	:	BLM Bond Number:
	:	
	:	Surety Bond Number:
	:	
	:	

Surety Bond Returned as Unacceptable

The surety bond referenced above was received in this office on behalf of ____ on (date) in an effort to provide bond coverage for (Notice/Plan of operations number (xxxxxx) or mining operations in the State of (state) or nationwide). The surety bond is enclosed and hereby returned as unacceptable because (name of surety) is not an acceptable surety.

Pursuant to United States Department of the Treasury regulations at 31 CFR 223.1, a surety’s bonds are acceptable to the United States only as long as the surety company holds a certificate of authority. Additionally, according to the regulations at 43 CFR 3809.555, surety bonds must meet the requirements of Treasury Department Circular 570. (Name of surety) does not meet these requirements. For a list of acceptable sureties, please visit www.fms.treas.gov.

You may submit a surety bond from a surety meeting the above requirements, or you may submit a personal bond with an acceptable financial guarantee, to replace the unacceptable surety bond referenced above.

If you have any questions regarding this bond, please contact (author’s name), at (telephone number), (fax number), or (author’s email address), or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

cc:
Field Office(s)
BLM Accounts Staff

Illustration 3-2 – Memorandum to Forward Bond to Appropriate State Office
(III.C.4k)

3809 (Office Code)

Memorandum

To: State Director, (adjudication code)

From: Authorized Officer (adjudication code)

Subject: (type) Surface Management Bond, _____ (principal)

The attached surface management bond (rider, cancellation Notice, or other correspondence affecting the bond) was filed in our office on (date).

This bond covers only the State of (name) and, therefore, is forwarded to your office for adjudication.

OR

This nationwide bond is maintained in your office. Therefore, the documents are forwarded to your office for adjudication.

OR

This bond is maintained in your office. Therefore, the documents are forwarded to your office for adjudication.

If you have any questions regarding this bond, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead, or send questions by fax to (fax number) or electronically to (author's email address).

Authorized Officer

Attachment
Original Bond (and/or rider, Notice, etc.)

cc: Appropriate state office

(This decision may also be used to transfer a personal bond to the appropriate state office.)

Illustration 3-3 – Power of Attorney for Surety Bond
(III.C.5)

(This illustration is provided only for reference. The BLM does not draft POAs.)

Certificate of Authority No. #####

GENERAL POWER OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That ZEPHYR INDEMNITY COMPANY, a corporation organized and existing under the laws of the State of Texas, and having its principal office in the City of Houston, Texas, does hereby constitute and appoint:

MILDRED L. MASSEY

its true and lawful attorney-in-fact to execute, seal, and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizance, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, regulation, contract, or otherwise, in an amount not to exceed:

*****ONE MILLION AND NO/100 DOLLARS*****

and the execution of all such instrument(s) in pursuance of these presents, shall be binding upon said ZEPHYR INDEMNITY COMPANY as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V, Section 6(c) of the By-Laws, adopted by the Board of Directors of ZEPHYR INDEMNITY COMPANY, at a meeting called and held on this third day of May, 1999, of which the following is a true transcript of said Section 6(c):

"The President or any Vice President, Assistant Vice President, Secretary, or Resident Secretary shall have the power and authority:

1. To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto. bonds and undertakings, recognizance, contracts of indemnity, and other writings obligatory in the nature thereof, and;
2. To appoint special Attorneys-in-Fact, who are hereby authorized to certify copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
3. To remove, at any time, any such Attorney-in-Fact or Special Attorney-in-Fact and revoke the authority given to him."

Further, this Power of Attorney is signed and sealed by a facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting called and held on the third day of May, 1999, of which the following is a true excerpt:

Illustration 3-3 – Power of Attorney for Surety Bond (page 2)
(III.C.5)

"Now therefore the signatures of any such officers and the seal of the Company may be affixed to any such power-of-attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN TESTIMONY WHEREOF, ZEPHYR INDEMNITY COMPANY has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, E H Frank, III, on this third day of May, 1999.

(seal) _____ President
E H Frank III

STATE OF TEXAS
COUNTY OF HARRIS

On this third day of May, 1999, before came the individual who executed the preceding instrument, to me personally known, and being duly sworn, said that he is the therein described and authorized officer of ZEPHYR INDEMNITY COMPANY; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Houston, Texas, the day and year first above written.

(seal) _____ NOTARY PUBLIC, Harris County Texas

CERTIFICATION

I, the undersigned officer of ZEPHYR INDEMNITY COMPANY, do hereby certify that I have compared the foregoing Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this ____ day of _____, 1999.

(seal) _____ Assistant Secretary

Only a certified copy of Power of Attorney bearing the Certificate of Authority No. printed in red on the upper right corner is binding. Photocopies or other reproductions of this document are invalid and not binding upon the Company.

ANY INSTRUMENT ISSUED IN EXCESS OF THE PENALTY AMOUNT STATED ABOVE IS TOTALLY VOID AND WITHOUT VALIDITY.

Illustration 3-4 – Surety Bond Acceptance (page 2)
(III.C.8)

Please be advised that no funds have been obligated under this bond for any proposed or existing operations. The BLM (*field office*) Field Office has not completed review of your proposed operations or determined the estimated reclamation costs and the associated required bond amount. When the field office completes its review and determines the estimated costs of reclamation for your proposed operations, we will send you another decision obligating the reclamation costs as determined by the field office to your bond. However, if the field office determines that reclamation costs are higher than the amount of the bond accepted, you will have to adjust the bond amount prior to our taking any further action. Acceptance of this bond does not authorize any surface disturbing activities.

The BLM _____ Field Office(s) has determined the estimated reclamation costs (RCE) on BLM serial number _____ to be \$xxx. This amount is now obligated to the bond. Inasmuch as the bond amount submitted exceeds the bond amount required, an amount of \$_____ remains unobligated and available to be applied to future bond increases required on the Plan/Notice *OR*: Inasmuch as the bond amount submitted equals the bond amount required, no amount of bond remains available for additional needs.

For statewide and nationwide bonds: The BLM Authorized Officer, shown below, has determined the estimated reclamation costs associated with the surface disturbance proposed on the Plans and/or Notices to be as shown below. Those reclamation costs are obligated under the bond as follows:

<u>BLM Office</u>	<u>BLM Serial Number</u>	<u>Date RCE Determined</u>	<u>Bond Amount Required/Obligated</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
		Total	\$ _____

Inasmuch as the statewide/nationwide bond amount submitted exceeds the bond amount required, an amount of \$_____ is unobligated and is available to be applied to future bond increases required on the Plan/Notice or additional Plans and/or Notices. *OR*: Inasmuch as the bond amount submitted equals the bond amount required, no amount of bond remains available for additional needs.

The bond will be maintained by this office. Termination of liability under the bond will be permitted only after this office is satisfied that there is no outstanding liability on the bond or satisfactory replacement bond coverage is furnished.

If you have any questions regarding this bond, please call (*author's name*) at (*telephone number*), or write to the attention of (*office code*) at the address shown on the letterhead, or send questions by fax to (*fax number*) or electronically to (*author's email address*).

Authorized Officer

cc: Surety's Home Office
Applicable district/field office(s) or other surface management personnel
All state offices if a nationwide bond (post information electronically to BLM Bond Surety Group).

Illustration 3-5 – Accepting Surety Bond and Reinsurance Agreement
(III.D.2)

3809 Office Code

DECISION

Principal:	:	
	:	
Sureties	:	
Direct Writing Company:	:	Surety Bond Number: _____
(c/o Attorney-in-Fact)	:	Bond Amount Submitted: \$ XXX
	:	Date Bond Executed: _____
	:	BLM Bond Number: _____
	:	
Reinsuring Company:	:	Agreement Number: _____
(c/o Attorney-in-Fact)	:	Amount of Reinsurance: \$ YYY
	:	Date of Reinsurance Executed: _____
	:	BLM Bond Number: _____

Surety Bond Accepted
Reinsurance Agreement Accepted

On (date) this office received surety bond number _____ in the amount of \$ _____ with _____ as principal, and underwritten by _____ as surety.

The bond was submitted for reclamation of surface disturbance associated with Plan of Operations number _____. The bond is in response to the BLM _____ Field Office determination dated _____ of the estimated cost of reclamation on BLM serial number _____ to be \$XXX, for which a bond in at least that amount is required.

According to the certification provided (surety) by the U.S. Department of Treasury, the current underwriting limitation of (surety) is \$ZZZ. Because the amount of surety bond number _____ exceeds the current underwriting limitation, (surety) has provided reinsurance for the bond.

 (Name of Reinsurer) has executed a Reinsurance Agreement on Standard Form 275 in the amount of \$YYY to reinsure and counter-secure the excess bond amount written by (surety) . The purpose of the agreement is to indemnify the obligee (BLM) against loss under the bond for any sum up to \$YYY that may be owing and unpaid by (surety) under surety bond number _____, as stated in Standard Form 275.

Illustration 3-5 – Accepting Surety Bond and Reinsurance Agreement (Page 2)

Accepting Surety Bond and Reinsurance Agreement

The surety bond (BLM bond #) and the reinsurance agreement (BLM bond #) have been examined and found satisfactory. Therefore, the bond and reinsurance agreement are accepted effective (date) .

The estimated cost of reclamation is now obligated to the bond. Inasmuch as the bond amount submitted exceeds the bond amount required, an amount of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice *OR*: Inasmuch as the bond amount submitted equals the bond amount required, no excess remains available for additional needs.

The bond will be maintained by this office. Termination of liability under the bond will be permitted only after this office is satisfied that there is no outstanding liability on the corresponding bond or after satisfactory replacement bonding coverage is furnished.

If you have any questions regarding this bond, please call (author's name) at (telephone number) , or write to the attention of (office code) at the address shown on the letterhead, or send questions by fax to (fax number) or electronically to (author's email address) .

(Appeals Language)

Authorized Officer

cc: Surety's Home Office
Reinsurance Company's Home Office
Applicable district/field office(s) or other surface management personnel
All state offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)
Other surety/reinsuring offices as applicable

Illustration 3-6 – Request for Determination of Continuing Bond Coverage
(III.E.1c-d & III.F.1c)

The following request may be sent via email.

To: Applicable Field Office, Other State Offices

From: BLM Office Maintaining the Bond

This office has received a (notice of cancellation, notice of surety decertification, request to terminate the bond, etc.) for BLM bond number(s) _____.

Please report in writing at your earliest convenience, but no later than (specify a date by which a reply is required if there is a need, such as a dated surety cancellation notice) if there is a continuing need for the bond. If bonding continues to be required, please state the current reclamation cost estimate for which a bond is required for each Plan of Operations or Notice-level operations listed below.

(Adjudication completes the following:)

Name of Bond Principal/Co-principal:

Name of Operator:

BLM Serial Number for the Plan of Operations/Notice:

Current Bond Amount Obligated for the Operations:

If you have any questions regarding this bond, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead, or send questions by fax to (fax number) or electronically to (author's email address).

(Other surface management agencies, as appropriate, should receive this request in a letter.)

Illustration 3-7 – Replacement Bond Required
(III.E.5& III.F.4)

3809 (Office Code)

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL
OR COURIER SERVICE**

NOTICE

Principal:	:	BLM Bond Number:	_____
	:		
	:	Bond Amount Obligated:	\$_____
	:		
Surety: (c/o Attorney-in-Fact)	:	Surety Bond Number:	_____
	:		
	:	Date Executed:	_____
	:		
	:	Bond Amount Submitted	\$_____

Replacement Bond Required

Effective (date), this office accepted surety bond number _____ to secure a bond (individual, statewide, nationwide) filed by the obligor named above. The bond provides for the reclamation of the surface on Plan/Notice/statewide/nationwide. The operator, name of operator, is required to maintain satisfactory bonding for surface reclamation on its operations conducted under the regulations at Title 43 Code of Federal Regulations (CFR) 3809.

If timely Notice of surety cancellation is received by the BLM:

On (date), we received timely notification from the surety, _____, that it has elected not to renew the surety bond identified above and the bond will be canceled effective (date).

If Notice of surety cancellation is not timely received by the BLM:

On (date), we received notification from the surety, _____, that it has elected not to renew the surety bond identified above and the bond will be canceled effective (date). Condition number 8 of the terms and conditions of the surety bond states, "Should the surety elect to cancel a bond, the surety agrees to give the principal and the BLM 90 days written notice" [Emphasis added.] Therefore, the BLM cannot accept the Notice of Cancellation received (date), containing the (30-day or 60-day cancellation clause or effective cancellation date of (date) , etc., which ever applies). However, the BLM can accept the Notice of Cancellation to be effective (date), which is 90 days from the date of receipt and thereby consistent with the terms and conditions of the surety bond contract. *If surety is decertified by Treasury:* Pursuant to United States Department of the Treasury regulations at Title 31 CFR 223.1, a surety's bonds are acceptable to the United States as long as the surety company continues to hold a certificate of authority. Also, Treasury Department regulations at 31 CFR 223.17 provide that when

Illustration 3-7 – Replacement Bond Required (page 2)
(III.E.5& III.F.4)

Treasury determines a surety no longer has the continued ability to keep and perform its contracts, the Secretary of the Treasury will revoke the surety's certificate of authority. (Name of Surety) was terminated by the Department of the Treasury as an acceptable surety on Federal bonds effective (date) .

If adjudication receives timely information from the BLM Field Office: We have obtained documentation from the BLM Field Office(s) that bond coverage continues to be required for surface reclamation on your operations, BLM serial number , in the amount of \$
(or, if statewide or nationwide bond, list all applicable operations and the required reclamation bond amount for each.

OR, if adjudication has not received information needed from the BLM Field Office: To date, this office has not received notice that reclamation on BLM serial number *(or, if statewide or nationwide bond, list all applicable operations)* has been completed so as to allow reduction or termination of the bond obligation. Since liability continues to exist, bond coverage must be maintained pursuant to the terms and conditions of the Notice(s)/Plan(s) of Operations. The operator may be in noncompliance with the terms of the Plan of Operations if bond coverage is interrupted. Therefore, interruption of bond coverage needs to be averted.

The BLM uses Surface Management Surety Bond (Form 3809-1) for bonds underwritten by a surety company. We have enclosed a copy of the executed surety bond for your convenience. Please note that Paragraph 8 of the terms and conditions of the surety bond reads as follows:

“The surety further agrees that in the event of such cancellation this bond shall remain in full force and effect as to all areas within the... plan(s) of operations or notice disturbed prior to the effective date of such cancellation, unless and until the principal should file a substitute bond or other acceptable instrument to protect the interest of [BLM] and such bond or instrument is accepted by the [BLM]...”

Cancellation does not apply to re-disturbance of areas disturbed prior to the effective date of the termination.

Therefore, you are hereby requested to *(For surety cancellation only: provide proof of reinstatement of the existing bond or)* provide replacement bonding in the amount of \$. *(For surety cancellation only: Proof of reinstatement or)* Replacement bonding must be received in this office at the following address *(give address of BLM office adjudicating and maintaining the bond(s))* on or before *(date)*, the effective date of cancellation.

In accordance with the terms and conditions of the bond contract and the authorities under which the bond was formed and executed, **if *(For surety cancellation only: proof of bond continuance, or) satisfactory replacement bonding is not received in this office on or before* *(date –(NO MORE THAN 90 days from the BLM's receipt of cancellation))*, the effective date of cancellation, this office will initiate the BLM's default procedures and demand performance under the bond from the bond principal and the surety.** Performance under the bond may be commencement of reclamation on the site or payment under the bond.

Illustration 3-7 – Replacement Bond Required (page 3)
(III.E.5& III.F.4)

Please be advised, in accordance with the terms of the bond contract, the surety agrees that the bond remains in full force and effect as to all areas within the Plan of Operations/Notice disturbed prior to the effective date of the cancellation, unless and until the principal (operator) files a satisfactory replacement instrument to protect the interests of the BLM and such bond or bond and financial instrument is accepted by the BLM.

Additionally, the operator may be subject to applicable enforcement actions, fines, and penalties, as allowed at 43 CFR 3809 and as determined by the BLM field office (or other appropriate BLM office as the authority may be delegated in your state).

If you have any questions regarding this bond, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead, or send questions by fax to (fax number) or electronically to (author's email address).

Authorized Officer

Enclosure

cc: Surety Home Office
Affected BLM field offices

Illustration 3-8 – Bond Reinstatement Accepted
(III.F.7)

3809 (Office Code)

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL
OR COURIER SERVICE**

DECISION

Principal:

: Bond BLM Number: _____

:

: Total Bond Amount Required: \$ _____

:

Surety:

: Surety Bond Number: _____

:

c/o Attorney-in-Fact

: Amount of Bond Submitted: \$ _____

:

: Date Executed:

Notice of Reinstatement Accepted
Bond Remains in Full Force and Effect

On _____ (date), we received a Notice from _____ (surety) of its election to cancel its suretyship (insert the action of which the BLM was notified) on behalf of _____ (principal) under surety bond number _____ as referenced above. The bond was accepted effective _____ (date), to cover the estimated reclamation costs for disturbance associated with operations conducted (on Notice/Plan of Operations BLM serial number/statewide in the State of _____ (name of State) /nationwide).

Subsequently, on _____ (date) we received a Notice of Reinstatement (insert title of document received from surety) from _____ (surety) that coverage under the bond is reinstated and will continue in full force and effect (repeat the same language as given in the Reinstatement Notice, for example, as though Notice of cancellation had not been served or with no lapse in coverage).

The BLM has examined the Notice of Reinstatement and found it to be satisfactory. Therefore, the BLM hereby accepts the Notice of Reinstatement. The surety bond shown above remains in full force and effect with no lapse in the coverage provided.

The coverage provided by surety bond number _____ with _____ as principal (list operator if applicable) continues to be obligated for the performance of surface reclamation liabilities (on Notice/Plan of Operations BLM serial number or statewide/nationwide) as follows:

BLM Serial Number	Required and Obligated Bond Amount
(Project Name, Date Obligated, field office, other information as needed)	Required/Obligated

Illustration 3-8 Bond Reinstatement Accepted (page 2)
(III.F.7)

Bond Reinstatement Accepted

If you have any questions regarding this bond, please call (author's name) at (telephone number), or write to the attention of (office code), at the address shown on the letterhead, or send questions by fax to (fax number) or electronically to (author's email address) .

Authorized Officer

cc: Surety's Home Office
Applicable district/field office(s) or other surface management personnel
All state offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)

Illustration 4-1 – Cash Bond Accepted
(IV.B.8)

3809 (Office Code)

DECISION

Obligor: : BLM Bond Number: _____
: :
: Bond Amount Submitted: \$ _____
:

Cash Bond Accepted

On ____ (date) ____, this office received a personal bond form with (name), as principal, and completed in the amount of \$ _____. The bond is to provide (individual, statewide, nationwide) bond coverage for operations to be conducted by (name of obligor/operator) as referenced above. On ____ (date) ____, we received \$ _____ in the form of a (guaranteed remittance, certified check, cashier’s check, cash) as the financial pledge to secure the bond. The bond has been examined and found satisfactory, and is therefore accepted effective ____ (date) ____.

The bond will be maintained by this office. Termination of liability under the bond will be permitted only after this office is satisfied that there is no outstanding liability on the bond or satisfactory replacement bond coverage is furnished. The funds will be retained in a suspense account until this office is satisfied that there is no outstanding liability on the bond or until satisfactory replacement bond coverage has been accepted. When the deposit is no longer needed to secure the bond, this office will authorize a refund of the financial pledge.

A bond may be submitted for acceptance prior to a determination of the reclamation costs being made by the field office. If this is the case and the bond is found satisfactory, use the following sample language:

Please be advised that no funds have been obligated under this bond for any proposed or existing operations. The BLM _____ Field Office has not completed review of your proposed operations or determined the reclamation costs and the associated required bond amount. When the Field Office completes its review and determines the estimated costs of reclamation for your proposed operations, we will send you another decision obligating the reclamation costs as determined by the Field Office to your bond. However, if the Field Office determines that reclamation costs are higher than the amount of the bond accepted, you will have to adjust the bond amount prior to our taking any further action. Our acceptance of this bond does not authorize any surface disturbing activities until funds under the bond are obligated for specific operations.

For individual bond: The bond was submitted to guarantee the reclamation of lands proposed to be disturbed by the operations conducted by the principal on Notice or Plan of Operations number (BLM serial number).

The BLM _____ Field Office has determined the cost of reclamation on BLM serial number to be \$ _____. This amount is now obligated to the bond. Inasmuch as the bond amount submitted exceeds the bond amount required, an unobligated amount of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice.

Illustration 4-1, Page 2

Cash Bond Accepted

OR: Inasmuch as the bond amount submitted equals the bond amount required, no excess amount remains available.

For statewide bond: The bond constitutes coverage of all operations conducted by or on behalf of the obligor/operator on Federal surface management operations in the State of (name). The bond provides coverage of the principal where that principal has interest in, and/or responsibility for operations authorized under the authority of any of the Acts cited on the bond. When additional reclamation costs are determined by the BLM field office(s), the obligation under the bond will be increased accordingly by a decision from this office.

For a nationwide bond: The bond constitutes coverage of all operations conducted by or on behalf of the obligor/operator on all Federal surface management operations. The bond provides coverage of the principal where that principal has interest in, and/or responsibility for operations authorized under the authority of any of the Acts cited on the bond. When additional reclamation costs are determined by the BLM field office(s), the obligation under the bond will be increased accordingly by a decision from this office.

For statewide and nationwide bonds (when more than a single operation is covered under the bond): The BLM field office(s) (or other authorized personnel) shown below have determined the estimated reclamation costs associated with the surface disturbance proposed on the Plans and/or Notices. Those reclamation costs are obligated under the bond as follows:

<u>BLM Office</u>	<u>BLM Serial Number</u>	<u>Date Costs Determined</u>	<u>Bond Amount Required/Obligated</u>
-------------------	--------------------------	------------------------------	---------------------------------------

Total \$ _____

Inasmuch as the statewide/nationwide bond amount submitted exceeds the bond amount required, an unobligated amount of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice or to additional Plans and/or Notices. *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no funds remain available for additional Plans or Notices.

If you have any questions regarding this bond or the financial instrument, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the _____ letterhead or send questions by fax to (fax number) or electronically to (author's email address).

Authorized Officer

cc: Applicable district/field office(s) or other surface management personnel
 All state offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)

Illustration 4-2 – Sample Format for Letter of Credit
(IV.C)

Note: BLM does not draft LCS

IRREVOCABLE LETTER OF CREDIT No. _____ Date Issued _____

Beneficiary:

US DOI, Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
P.O. Box 12000
Reno, Nevada 89520-0006

Ladies and Gentlemen:

On behalf of (operator) _____ of _____ (address) _____, as obligor, we _____ (bank, financial institution) _____ of _____ (address) _____ hereby establish an Irrevocable Letter of Credit in favor of the U.S. Department of Interior, Bureau of Land Management (BLM) and agree to pay upon demand by the BLM, up to an aggregate amount of U.S. \$ _____ upon receipt of your draft(s) at sight on us and your written notification signed by a purported authorized officer of BLM to the effect the obligor has been determined to be in default and the amount drawn represents the reasonable amount, as determined by BLM, of such default.

This Letter of Credit is available with _____ (bank or financial institution) _____ at _____ (address) _____ by sight payment. Partial drawings are permitted.

This Letter of Credit is effective _____ (date) _____, and will expire at our offices in _____ on _____ (minimum of 1 year from effective date), and shall thereafter be automatically renewed for a 1 year period upon such date and upon each anniversary of such date, unless at least 90 days prior to the then current expiration date we notify you at the above address by certified mail, return receipt requested, that we elect not to renew this letter of credit for such additional period.

Upon receipt by the BLM of such a notice from us not to renew this Letter, the BLM may draw on us at sight for up to the amount of the Letter of Credit, prior to the expiration thereof, provided that such a draft is accompanied by a statement signed by a purported authorized officer of the BLM that no satisfactory replacement bond has been provided by the obligor prior to 30 days before this Letter of Credit expires, pursuant to 43 CFR 3809.

It will not be required for the BLM, in order to draw on this Letter of Credit, to furnish the original Letter. However, it is understood, as a condition of any payment, that the face amount of the Letter will automatically be reduced by any payment made by the bank, and that the BLM will promptly surrender the original Letter of Credit when and if the bank tenders to the BLM the full amount of funds represented by this Letter. Such surrender will occur as soon as reasonably practical after full payment is made. The original Letter of Credit will also be surrendered promptly following its expiration.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 600.

Illustration 4-2 – Sample Format for Letter of Credit

We promise that the amount of credit herein established will not be reduced for any reason during the effectiveness of this Letter of Credit without the prior written approval of the Bureau of Land Management (BLM). In the event that we, the bank, become unable to fulfill our obligations under this Letter of Credit for any reason, notice will be given immediately to the Obligor and the BLM.

ATTEST: NAME OF FINANCIAL INSTITUTION
 Title:
 BY:
 (Type in Name and Title of Officer)

Illustration 4-3 – Unacceptable Letter of Credit Returned
(IV.C.4f)

3809 (Office Code)

REGISTERED MAIL OR COURIER SERVICE

DECISION

Obligor:	:	BLM Bond Number:
	:	
	:	
Financial Institution(s):	:	Letter of Credit Number:
<i>(Advising Bank also, if such exists)</i>	:	
	:	Date Issued:

Letter of Credit Returned as Unacceptable

The letter of credit (LC) referenced above was received in this office on behalf of _____ on _____ *(date)* in an effort to provide bond coverage for *(Notice/Plan of operations number (xxxxxx) or mining operations in the State of (state) or nationwide)*. The letter of credit is enclosed and hereby returned to the financial institution as unacceptable for the following reason(s):

Insufficient amount; the LC amount should be \$___ to provide the minimum required bond coverage.

The LC fails to indicate the U.S. Department of the Interior-Bureau of Land Management, *(the BLM office maintaining the bonds and financial instruments)* as the beneficiary under the LC.

The initial expiration date of the LC is *(date)*, which is less than 1 year after the filing of the LC.

The LC fails to provide for automatic renewal of the credit for periods of not less than 1 year.

The LC allows termination at its expiration which is less than the 90-day notice required by BLM and therefore unacceptable.

The LC fails to provide the BLM the right to collect the LC for either default by the obligor or a failure by the obligor to provide replacement bond coverage in the event of a 90-day notice from the financial institution of its intent not to renew the credit.

The LC is revocable and therefore unacceptable to the BLM.

The original bond will be held for 60 days. If the indicated deficiency(ies) is corrected and the LC returned, this office will process the bond toward acceptance. If an earlier request for its return is received or if the necessary corrections to the LC have not been furnished within 60 days, this office will return the original bond to the obligor unaccepted.

If you have any questions regarding this bond or the financial instrument, please call *(author's name)*, at *(telephone number)*, or write to the attention of *(office code)*, at the address shown on the letterhead or send questions by fax to *(fax number)* or electronically to *(author's email address)*.

(Appeals Language)

Authorized Officer

2 Enclosures

1 - Letter of Credit (To Issuing Financial Institution)

2 - Form 1842-1(To Obligor)

Illustration 4-4 – Personal Bond Secured by Letter of Credit Accepted (IV.C.8)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Obligor:	:	BLM Bond Number:
	:	
	:	Bond Amount Submitted:
	:	
Financial Institution:	:	LC Number:
	:	
	:	Amount of LC:
	:	
	:	Date Issued:

Bond Secured by Letter of Credit Accepted

On (date), this office received a personal bond and a Letter of Credit (LC) in the amount of \$_____ for coverage of all operations conducted by or on behalf of the obligor on Notice or Plan of Operations (serial no.). The bond has been assigned BLM bond number _____. The bond and LC have been examined and found acceptable; therefore, the documents are accepted effective (date).

The pledge for the bond is a LC written by the financial institution named above. The document will be retained by the BLM until this office is satisfied that all terms and conditions of the Notice or Plan of Operations have been fulfilled or until a satisfactory replacement bond has been accepted. The LC will be returned to the financial institution when this office determines that the bond is no longer required.

The LC will continue indefinitely in the absence of notice from the financial institution of its determination not to renew the letter. Such a notice must be received in this office at least 90 days prior to the original expiration date of (date), or the automatic extension dates falling on the same day in subsequent years. A copy of such notice should also be provided to the obligor, who would then be responsible for providing a replacement security to the BLM. Unless the obligor provides a satisfactory replacement bond at least 30 days prior to the then fixed expiration date, the BLM will demand that the financial institution pay the full amount of the credit to ensure continuing bond coverage of the obligor. Any such funds thus obtained will be retained, as long as none are required to correct defaults, until the bond is no longer required or until replacement bond coverage is accepted by the BLM.

A bond may be submitted for acceptance prior to a determination of the reclamation costs being made by the field office. If this is the case and the bond is found satisfactory, use the following sample language:

Please be advised that no funds have been obligated under this bond for any proposed or existing operations. The BLM _____ Field Office (Field Office) has not completed review of your proposed operations or determined the reclamation costs and the associated required bond amount. When the Field Office completes its review and determines the estimated costs of reclamation for your proposed operations, we will send you another decision obligating the reclamation costs as determined by the Field Office to your bond.

Illustration 4-4 – Personal Bond Secured by Letter of Credit Accepted (page 2)

However, if the Field Office determines that reclamation costs are higher than the amount of the bond accepted, you will have to adjust the bond amount prior to our taking any further action. Acceptance of this bond does not authorize any surface disturbing activities.

For individual bond: The BLM _____ Field Office has determined the cost of reclamation on BLM serial number _____ to be \$xxx. This amount is now obligated to the bond. Inasmuch as the bond amount submitted exceeds the bond amount required, an excess of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice. Additional reclamation obligations as determined by the BLM Field Office(s) under this bond will be made by a decision issued by this office. *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no funds remain available for amendments to the Plan/Notice.

For statewide or nationwide: The BLM field office(s) (or other authorized officer) shown below has determined the estimated reclamation costs associated with the surface disturbance proposed on the Plans and/or Notices to be as shown below. Those reclamation costs are obligated under the bond as follows:

<u>BLM Office</u>	<u>BLM Serial Number</u>	<u>Date Costs Determined</u>	<u>Bond Amount Required/Obligated</u>
			\$ _____
			\$ _____
		Total	\$ _____

Inasmuch as the bond amount submitted exceeds the bond amount required, an excess of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice or additional Plans and/or Notices. Additional reclamation obligations as determined by the BLM field office(s) under this bond will be made by a decision issued by this office. *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no funds remain available for additional reclamation costs.

If you have any questions regarding this bond or the financial instrument, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead or send questions by fax to (fax number) or electronically to (author's email address).

Authorized Officer

- cc: Advising bank (if applicable)
 Applicable district/field office(s) or other surface management personnel
 All state offices if a nationwide bond (Post information electronically to BLM Bond
 Surety Group)
 Other surface management agencies if appropriate

Illustration 4-5 – Replacement Security Required When Bank Elects not to Renew LC (IV.C.12)

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

NOTICE

Obligor:	:	BLM Bond Number:	
	:		
	:	Obligated Bond Amount:	\$
Financial Institution:	:	Letter of Credit Number:	
	:		
	:	Date Issued:	
	:		
	:	Amount of Letter of Credit:	\$

Replacement Bond Security Required

Effective (date), this office accepted Irrevocable Letter of Credit Number _____ to secure a personal (individual, statewide, nationwide) bond filed by the obligor named above. The bond provides for the reclamation of the surface on Plan/Notice/statewide/nationwide. Per regulation and the terms and conditions of the accepted letter of credit, “The letter of credit will continue indefinitely in the absence of notice from the financial institution of its determination not to renew the letter. Such a notice must be received by this office at least 90 days prior to the original expiration date, and the same date in following years of any extensions granted, of (date).”

On (date), we received timely notification from the financial institution named above that it will not renew Letter of Credit Number _____ past the current expiration date of _____. We have also obtained information from the BLM field office(s) that bond coverage continues to be required for surface reclamation on your operations in the amount of \$_____.

Therefore, you are hereby requested to provide replacement security, or a new bond, in the amount of \$_____ at least 30 days prior to the letter of credit expiration date of (date); that is, not later than (date).

In accordance with regulations at 43 CFR 3809 and the terms and conditions of the letter of credit, if a replacement security is not received in this office on or before (date), this office will demand the financial institution named above pay the full amount of Letter of Credit Number _____ to insure continuing coverage of the obligor named above. Such funds will be retained in our suspense account, with no interest accruing to the obligor, until the bond coverage is no longer required or until the obligor furnishes a replacement security.

If you have any questions regarding this bond or the financial instrument, please call (author’s name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead or send questions by fax to (fax number) or electronically to (author’s email address).

Authorized Officer

cc: Field Office (if individual bond)
 Advising Financial Institution (if LC was issued through a correspondent bank)

Illustration 4-6 – Demand for Payment of Letter of Credit Proceeds
(IV.C.13)

3809 (Office Code)

COURIER SERVICE

DECISION

Financial Institution: : Letter of Credit Number: _____
 (Bank which issued LC) :
 : Amount of Credit: \$ _____
 :
 Obligor: : BLM Bond Number: _____

Payment of Irrevocable Letter of Credit Demanded - Statement

In accordance with the terms and conditions of the letter of credit (LC), the Bureau of Land Management (BLM) hereby demands immediate payment of LC No. xxxxxxx because no satisfactory replacement bond has been provided by the obligor prior to 30 days before the expiration date of this LC. Replacement security was requested of the obligor by decision issued by the BLM on date. A copy of that decision is enclosed for your convenience.

We enclose our payment draft and the original LC No. xxxxxxx with this Decision. By the submission of these documents, the BLM demands that the financial institution named above pay the full amount of LC No. xxxxxxx to this office at the account information below. The funds will be deposited and retained in our suspense account, with no interest accruing to the obligor, to insure continuing bond coverage of the obligor until this coverage is no longer required or until the obligor furnishes a replacement security.

Upon payment of LC No. xxxxxxx, please credit account number BLM state office financial account number in the following name:

Treasury General Account - State Office
 BLM (State) State Office
 ALC Number xxxxxx

This account is located at the following: BLM State Office's Bank name and address

If you have any questions, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead or send questions by fax to (fax number) or electronically to (author's email address).

(Appeals Language)

Authorized Officer

Enclosures

cc: Obligor
 Advising Bank (if any)
 Field Office(s)
 BLM Accounts Staff

Illustration 4-7 – Payment Draft for Financial Institution
(IV.C.13)

(To accompany Decision Demanding Payment, Illustration 4-6)

3809 (Office Code)

PAYMENT DRAFT

Date

Irrevocable Letter of Credit No. xxxxxxxxx Pay to the Order of the United States Department of the Interior,
Bureau of Land Management,

Specify the amount in words, e.g.,

One Hundred Thirty-Two Thousand, etc. and NO/100 U.S. Dollars (US\$xxxxxx).

To: bank which issued the letter of credit
address
address
address

Authorized Officer's Signature

Title

Note: The different financial institutions may have different language and/or format required for demanding payment of a letter of credit and the payment draft. It is advisable to fax a draft of Illustrations 4-6 and 4-7 to the bank before a final is issued. Be sure the demand is received by the bank per the LC instructions prior to the expiration date of the letter of credit.

Illustration 4-8 – Rescission of Demand for Payment of Letter of Credit
(IV.C.16)

3809 (Office Code)
COURIER SERVICE

DECISION

Financial Institution:	:	Letter of Credit Number:	_____
(Bank which issued LC)	:		
	:	Amount of Credit:	\$_____
	:		
	:	Expiration Date:	_____
	:		
Beneficiary (BLM)	:	BLM Bond Number:	_____

Demand for Payment of Letter of Credit Rescinded

On _____ (Date), this office issued and forwarded a Payment Draft and a Decision to the above financial institution demanding payment under Irrevocable Letter of Credit (LC) No. ____ because of the expiration of the LC.

We hereby rescind our demand for payment under LC No. _____ because on _____ (Date), we received an amendment to LC No. ##### which extends the expiration date to _____ (Date),

We request that you return the original LC No. _____ to the beneficiary at the address shown above (consistent with the beneficiary’s address stated in the LC).

If applicable: Because the replacement security was received on the expiration date of the original letter of credit, this revision is being telefaxed to the above financial institution to prevent payment of the LC, with a confirmation copy to follow.

(Appeals Language)

Authorized Officer

cc: Obligor
Advising bank, if applicable
Field Office(s)

Illustration 4-9 – Substitute Security for Nationwide Personal Bond Accepted
(IV.C.16 and IV.D.11)

3809 (Office Code)

REGISTERED MAIL OR COURIER SERVICE

DECISION

Obligor:	:	BLM Bond Number: _____
	:	
	:	
	:	
Financial Institution(s):	:	Description of LC or CD (without privacy information)
	:	

Substitute Security Accepted
Original Security Returned

On _____ (date), this office received a (type of security: LC, CD, etc.) issued by the financial institution named above. This security is to replace the (\$ _____) (Type of security), currently held by this office and issued by the (name of financial institution). The financial pledge secures a(n) (individual, statewide, or nationwide) bond, BLM bond number _____, for the above obligor. The replacement security has been examined, found satisfactory, and is accepted effective _____ (Date). Therefore, (individual, statewide, or nationwide) bond coverage continues, uninterrupted, on Plan of Operations/Notice/in the State of _____, or for nationwide operations conducted by the operator, (name of operator).

The replacement security is (describe the security and insert appropriate language here for that type of security, i.e., Cash language from Illustration 4-1, LC language from Illustration 4-4, or CD language from Illustration 4-13, Treasury Security language from Illustration 4-18).

The original security is being returned, enclosed, to (name of financial institution or obligor per instruction from obligor), for disposition. This Decision constitutes the bank's authority to release the principal amount and any interest accrued to the obligor.

OR

If the original security was a cash pledge: A refund has been authorized by our office and a check in the amount of \$_____ is forthcoming.

Authorized Officer

Enclosure (Return LC to the financial institution only; CD may be returned to financial institution or obligor, as directed by obligor)

cc: Additional financial institutions, as applicable

Illustration 4-10 – Sample Format for Assignment of Time Deposit Issued by the Bank (IV.D.4c)

Name of Bank

ASSIGNMENT OF CERTIFICATE OF DEPOSIT

Know All Persons by These Presents: For value received, and as collateral security on any and all performance bonds written on behalf of: _____ (Operator) _____.

The undersigned hereby assigns, transfers, and conveys unto **U.S. Department of Interior, Bureau of Land Management (BLM)** consisting of _____ (Collateral Type) _____ Account No. _____ located at _____ (Name and Address of Depository) _____ to the extent of \$_____ of said account, and as further evidence thereof there is being delivered contemporaneously herewith the original (N/A if no original) Instrument of the undersigned in said Depository together with a duly executed withdrawal order for the said amount hereinbefore assigned. The Depository is hereby ordered to pay the entire proceeds of said account to the **U.S. Department of Interior, Bureau of Land Management (BLM)** upon its demand, and the undersigned hereby waives any and all right of recourse against the Depository in connection with any such payment:

This Assignment is executed in duplicate and it shall remain in full force and effect until the said **U.S. Department of Interior, Bureau of Land Management (BLM)** has been fully indemnified and reimbursed for all loss, cost, premium and expense, and until all liability has terminated, upon the bond or bonds hereinbefore described. No change or termination of this agreement shall be valid unless consented to in writing by **U.S. Department of Interior, Bureau of Land Management (BLM)**.

County of _____ _____
 State of _____ _____
 _____ Financial Officer
 _____ Account Owner

On this _____ day of _____ In the year _____ before me, the undersigned, a Notary Public in and for said _____ County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to this instrument, and acknowledged that he executed it.

 Notary Public

ACCEPTANCE OF NOTICE BY DEPOSITORY

The undersigned Depository acknowledges receipt of the foregoing assignment, and agrees that its rights to any offset against this account are waived, and agrees to abide by its terms, this _____ day of _____, _____ at _____ o'clock _____ M.

 Name of Depository _____ By _____

AFFIX DEPOSITORY STAMP _____ (Signature and Title Of Officer) _____

(Please note this assignment was drawn by the Bank of America, Seattle, WA, and was approved by the Office of the Solicitor, Washington, for BLM Nevada. Any language or form that is different than the above should be approved by the Office of the Solicitor for your office prior to BLM acceptance. This assignment was only proposed and was never actually submitted to the BLM for acceptance so a corresponding acceptance decision or any maintenance documents have never been issued.)

Illustration 4-11 – Agreement to not Offset by Financial Institution (IV.D.4d)

Anyone seeking to secure a Bureau of Land Management (BLM) bond through a Certificate of Deposit (CD), or other type of time deposit, issued by a financial institution should have the terms and conditions of the financial institution placed on such pre-approved by the appropriate state office (where the bond will be filed). Such a deposit cannot be used as a pledge or security for any loan. It must be clear that the deposit is for the sole and exclusive use of the Department of the Interior, Bureau of Land Management. The financial institution must agree to not use the deposit to off-set any monetary default of the obligor.

Below is a sample agreement. This agreement is to be presented to BLM on bank letterhead when a time deposit account pledged as security for a bond may be subject to a set-off clause or there is right of set-off by the financial institution which issued the time deposit.

Name of Financial Institution (Bank): _____ Name of Obligor/Account Holder (Obligor): _____

AGREEMENT NOT TO OFF-SET

Whereas, the Bank is presently the Depository Bank for Certificate of Deposit / Investment Certificate or Certificate of Savings Account / Time Deposit, other _____, Number _____, in the principal amount of \$ _____, titled "Department of the Interior - Bureau of Land Management (BLM), for the deposit account of the Obligor.

Whereas, the Bank acknowledges that the purpose of the CD is for Obligor to fulfill Obligor's bonding requirements with the BLM.

Now, therefore, the Bank agrees that the Bank will not use the CD to exercise any set-off rights, which the Bank may now have or acquire in the future against the Obligor, the BLM, or any other agency of the Federal government.

The Bank further agrees not to take or accept the CD as collateral or security for any loan, credit, or other obligation by the Obligor, the BLM or any other agency of the Federal government.

This agreement will expire when the CD is withdrawn or any term of the CD, including the titling of the CD, is changed, amended, or modified. This agreement will renew whenever the CD renews, so long as ownership, titling, and all terms of the CD remain the same.

Signed this _____ day of _____, 20__.

Name of Bank

By: _____
Authorized Officer and Title

Illustration 4-12 – Unacceptable Certificate of Deposit (IV.D.4h)

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

NOTICE

Obligor: : BLM Bond Number:
:

Financial Institution: : Certificate of Deposit Issued:
:

Certificate of Deposit Returned as Unacceptable

The certificate of deposit (CD) (or other time deposit) filed in this office by the obligor on (date), in an effort to secure a bond for reclamation coverage for (Plan/Notice serial number) or (all operations nationwide, or in the State of (name)) is hereby returned as unacceptable for the following reasons:

___ Insufficient amount; the certificate of deposit should be in the minimum amount of \$___.

___ Insufficient proof was provided that the issuing financial institution has federally insured deposits.

___ The certificate of deposit is not properly payable to the Department of the Interior-BLM. If the certificate of deposit is not issued directly in the name of the Department of the Interior-BLM, the bank must submit proof that BLM has sole right of redemption. The CD must be pledged to BLM. Written evidence of the pledge must be provided by the bank to the BLM.

___ The certificate lacks the statement, "Approval by the Secretary of the U.S. Department of the Interior is required prior to redemption of the Certificate of Deposit by any party." The Secretary of the Interior, or his duly authorized representative, must be granted full authority to demand immediate payment in case of default. The CD fails to prevent redemption of the principal amount by the obligor without the consent of the BLM State Office, address_____. (Insufficient evidence that the issuing financial institution is aware of assignment of the CD to the Secretary of the Interior-BLM, and has no objection thereto.)

___ The certificate is not issued as automatically renewable or restricts the indefinite right of the BLM to collect in the event of default of the obligor (e.g., by requiring collection on or before a certain date).

We will hold the original bond for 60 days. If the indicated deficienc(ies) is corrected, this office will process the bond toward acceptance. If the necessary corrections have not been furnished by that time, or we receive an earlier request for return of the bond, we will return the bond to the obligor.

Authorized Officer

Enclosure

Illustration 4-13 – Bond Secured by Certificate of Deposit Accepted
(IV.D.8)

3809 (Office Code)

DECISION

Obligor: : BLM Bond Number: _____
 :
 :
 Financial Institution: : Amount of CD: _____
 :
 : Date Issued: _____
 :

Bond Secured by Certificate of Deposit Accepted

On (date), this office received a personal bond and a certificate of deposit (CD) in the amount of \$xxxx for coverage of all operations conducted by or on behalf of the obligor on Plan of Operations/Notice BLM serial no. / in the State of (name) / nationwide. The bond and CD have been examined and found satisfactory; therefore, the bond is accepted effective (date). *(If the bond and CD are received on different dates, state the respective dates and accept the bond effective the date the latter instrument was received.)*

The bond has been assigned BLM bond number _____ and will be maintained by this office. Termination of liability under the bond will be permitted only after this office is satisfied that there is no outstanding liability on the bond or satisfactory replacement bond coverage is furnished.

The pledge for the bond is a CD written by the financial institution named above. The bond will be maintained by this office. The CD will be retained by the BLM until this office is satisfied that there is no outstanding liability on the bond or until satisfactory replacement bonding has been accepted. If the term of the CD expires prior to the release or replacement of the bond, the obligor may obtain the return of the CD only by first providing satisfactory replacement bonding. Otherwise, the CD will be redeemed or retained for potential redemption to guarantee fulfillment of all of the obligor’s obligations on operations under the bond.

The CD will be returned to the obligor or the financial institution by this office, _____ at address _____ for release of the funds when this office determines that no outstanding liability exists under the bond. Please note, this office is the only BLM office that has the authority to permit redemption of the CD.

For individual bond: The bond was submitted to guarantee the reclamation of lands proposed to be disturbed by the operations conducted by the principal on Notice or Plan of Operations number (BLM serial number).

Illustration 4-13 – Bond Secured by a Certificate of Deposit Accepted (page 2)

For statewide bond: The bond constitutes coverage of all operations conducted by or on behalf of the principal on Federal lands in the State of _____ (name) _____. The bond provides coverage of the principal where that principal has interest in, and/or responsibility for operations on, Notices and/or Plans of Operations authorized under the authority of any of the Acts cited on the bond.

For a nationwide bond: The bond constitutes coverage of all operations conducted by or on behalf of the principal on all Federal Notices and/or Plans of Operations. The bond provides coverage of the principal where that principal has interest in, and/or responsibility for operations on, Notices and/or Plans of Operations authorized under the authority of any of the Acts cited on the bond.

The BLM _____ Field Office has determined the cost of reclamation on BLM serial number _____ to be \$xxx. This amount is now obligated to the bond.

Inasmuch as the bond amount submitted exceeds the bond amount required, an excess of \$ _____ remains available which may be applied to future bond increases required on the *Plan/Notice*. *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no excess remains available.

For SW and NW bonds (when more than one operation is covered): The BLM field office(s) (or other authorized officer) shown below has determined the estimated reclamation costs associated with the surface disturbance proposed on the *Plan(s) of Operations and/or Notice(s)* as shown. Reclamation costs obligated under BLM bond number _____ are as follows:

BLM Office	BLM Serial Number	Date Costs Determined	Bond Amount Required/Obligated
			\$ _____
			\$ _____
		Total	\$ _____

Inasmuch as the statewide/nationwide bond amount submitted exceeds the bond amount required, an excess of \$ _____ remains available which may be applied to future bond increases required on the *Plan/Notice* or additional *Plans and/or Notices*. *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no excess remains available.

If you or the financial institution have any questions regarding the certificate or bond, please call the BLM contact for this bond, _____ (your name) _____ at (telephone number) _____, or by writing to the attention of (office code) _____ at the address on the letterhead or electronically to _____ (your email address) _____.

Authorized Officer

- cc: Financial Institution
 Applicable district/field office(s) or other surface management personnel
 All state offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)

Illustration 4-14 – Collection of Certificate of Deposit to Financial Institution
(IV.D.14)

3809 (Office Code)
BLM Bond Number _____

Courier Service

Financial Institution

Dear (Name of Bank Contact):

The U.S. Department of the Interior, Bureau of Land Management (BLM), _____ State Office, is in possession of the (Name of Financial instrument) accounts which are described as follows:

<u>Number</u>	<u>Date Issued</u>	<u>Customer Account Number</u>	<u>Principal Amount of Deposit</u>
8420001060	9-20-1996	US DEP000630	\$ 10,000.00
9520001110	12-2-1996	US DEP000630	\$ 36,500.00

These instruments were accepted from (Name of account holder) as the financial security for performance bonds. The bonds were given to guarantee the reclamation of lands disturbed by mining operations in the event (Name of Operator) defaulted on its reclamation obligations. The bonds appoint the Secretary of the Interior, or the duly authorized delegate, to act as attorney-in-fact for the purpose of negotiating the financial security. As of (date) (Name of account holder) had forfeited the security because of defaulting on the bond. Therefore, we wish to collect the proceeds under the Accounts in accordance with the terms and conditions of the bond and regulations at 43 CFR 3809.595.

We enclose the original receipt for each of the Time Deposit accounts identified above. We also enclose a copy of the corresponding bond for your convenience. This letter has been signed by a BLM Officer delegated the authority to act on behalf of the Secretary of the Interior to collect the proceeds. We ask that (Name of Bank) credit the following account with the proceeds of the accounts:

Treasury General Account - CA
BLM Reno State Office
Agency Location Code 14110008
Account Number 1233580352

If there are any questions, please contact (adjudicator) at telephone number _____, email at (adjudicator's email address) or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer's Signature

Title

Enclosures

cc: BLM Accounts Staff
Other Bank(s) as Required

Illustration 4-15 – Information for Obtaining Negotiable Securities for a BLM Bond
(IV.E.1)

INFORMATION ABOUT NEGOTIABLE SECURITIES OF THE UNITED STATES

General information on pledging U.S. Treasury securities as collateral to the U.S. Government is found at 31 U.S.C. 9303 *et seq.* and Code of Federal Regulations at 31 CFR 225 (Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds).

The following is to assist the applicant in obtaining a U.S. Treasury Bill, Note, or Bond to be used as security for bond coverage required by the Bureau of Land Management (BLM), the Department of the Interior. Instead of being transferred to BLM's book-entry account through the Federal Reserve Bank (FRB) as in the past, securities are now held under the BLM's American Bankers Association (ABA) number with the FRB. Once a security is transferred into the FRB, neither the obligor nor the bank will be able to access the security without the BLM providing authorization to the FRB to do so.

Therefore, when you contact your bank to purchase a negotiable U.S. Treasury security, you need to send the following to the BLM office responsible for administering your bond as soon as possible:

1. Your name and mailing address. (If this is not the operator according to the Plan or Notice filed with the BLM, include the operator's name and address.)
2. The BLM serial number of the operations being bonded or a statement that the security is being pledged for a statewide or nationwide bond.
3. The type of Treasury security purchased (bill, bond, or note).
4. The par amount of the security, the interest rate, and the maturity date of the security.
5. The Committee on Uniform Securities Identification Procedures (CUSIP) number of the security.
6. The name and mailing address of your bank, along with the name and telephone number of a contact person at your bank.
7. The bank's nine-digit American Bankers Association number.
8. The name, address, ABA number, account number and point of contact at the financial institution where the interest payments will be sent.
9. The name of the FRB or FRB Branch servicing the depository financial institution.
10. A copy of your written authorization to the bank to establish a Treasury security.

Upon receipt of the above information, the BLM will telefax a copy of that information to the BLM National Operations Center, Accounting Operations Division, Negotiable Securities Manager. The Negotiable Securities Manager will then contact the FRB and the obligor's bank to authorize the transfer of the Treasury security to the FRB.

THE OBLIGOR'S BANK MUST NOT TRANSFER THE SECURITY TO THE FRB UNTIL AUTHORIZATION IS GIVEN BY THE BLM NEGOTIABLE SECURITIES MANAGER.

Illustration 4-15 – Information for Obtaining Negotiable Securities for a BLM Bond (page 2)

When the security is transferred to the FRB, the bank must include the following information in the electronic transfer message: "Security pledged to DOI- BLM [name of state office] by [name of obligor] for [BLM bond number _____]."

The following is an example of an acceptable transfer message: "Security pledged to DOI-BLM, Nevada State Office by (Zephyr Mining Company) for (BLM Bond Number NVB123489 *or for individual, statewide or nationwide bond*)."

The obligor is to provide the following to the BLM office as soon as possible:

1. A fully-completed BLM bond form (Form 3809-2).
2. A transaction document from your bank to verify the amount that you paid for the security, excluding any commission fee and accrued interest, equals or exceeds the bond amount required by the BLM. A discounted value less than the full amount is NOT acceptable. If a Treasury security, purchased at a discount, is submitted for less than the required bond amount, the bonded party must make up the difference (certified check, etc..) otherwise the bond will be returned unaccepted.

Once the security is transferred to the FRB, the FRB will send the Negotiable Securities Manager a confirmation of the transfer, including the date of transfer, titled, "Acknowledgment of Book Entry Deposit, Release of Account Transfer" and/or "Statement of Pledged Activity." The BLM National Operations Center will send a copy of the Statement or Acknowledgment will be sent to the BLM office to document the transfer.

Upon receipt of the items from the obligor and the Negotiable Securities Manager, the BLM office will notify the entity by written decision that the personal bond has been accepted, the BLM Bond Number assigned to the bond, and the date bond coverage is effective. A copy of the bond acceptance decision is sent to the Negotiable Securities Manager. The BLM will notify the obligor in its decision that (1) the personal bond has been accepted, (2) the BLM bond number assigned to the bond, and (3) the date the bond coverage is effective.

The BLM Negotiable Securities Manager will notify BLM about a maturing Treasury security about 60 days before the maturity date, and the BLM in turn will notify the obligor by letter that the security is maturing.

If bonding continues to be required and a satisfactory replacement financial instrument has not been accepted by the BLM **before** the maturity date of the security, the security will be reinvested automatically upon maturity.

If a satisfactory replacement financial instrument has been accepted by the BLM or a determination has been made by the appropriate BLM office(s) that bonding is no longer required, **after** the maturity date of the security, BLM adjudication will send a memorandum requesting the National Operations Center to direct the FRB to transfer the security to the obligor's bank.

If the entity is in default with the terms and conditions of the Plan of Operations or Notice for which bonding was required, and collection under the bond is warranted, the BLM office will send the Negotiable Securities Manager a memorandum requesting that at maturity, the cash proceeds be transferred to the BLM.

Illustration 4-15 – Information for Obtaining Negotiable Securities for a BLM Bond (page 3)

If your bank has any questions about the information provided, a bank representative should contact the servicing FRB. Any questions regarding the BLM's procedures may be directed to the BLM National Operations Center, Accounting Operations Division, Collections and Billings Section at PO Box 25047, Denver, Colorado 80225-0047 (telephone number 303-236-6332). For information regarding BLM bond requirements in general, the entity may contact your name or the adjudication section at telephone number _____.

Illustration 4-16 – Confirmation of Book Entry Deposit to Negotiable Securities Manager (IV.E.4)

3809 (Office Code)

Memorandum

To: Director, National Operations Center
Attention: Negotiable Securities Manager (OC-621)

From: Authorized Officer (State Office Adjudication Code)

Subject: Request for Transfer of Negotiable Treasury Security to Federal Reserve Bank

A surface reclamation performance bond of \$_____ is to be posted by the obligor shown below. On (date) the Bureau of Land Management (BLM) received confirmation that a Treasury security has been purchased as the pledge for the required bond and the obligor has authorized the bank to transfer the security. *(If appropriate)* The bond has been assigned BLM Bond Number _____.

Please contact the Federal Reserve Bank and the financial institution identified below to transfer the security to the Federal Reserve Bank. Please notify (adjudicator's name) at (email address) with confirmation of deposit into the Federal Reserve Bank. If you have any questions, please contact (adjudicator's name) at (email address) or (telephone number).

The following is furnished for your information:

1. Type of security purchased. (Treasury (*bill, note, or bond*) and stated interest rate.)
2. Current \$ value of the security.
3. Maturity Date
4. CUSIP
5. Name, address, and telephone number of contact at depository financial institution.
6. Depository Bank ABA Number.
7. Name, address, telephone number and name of contact at financial institution where interest payments will be sent.
8. Name and address of obligor.
9. Tax Identification Number or Social Security Number.
10. BLM serial number or state of coverage under the bond.

Note: Provide information on correspondent bank if obligor's bank is an advising bank.

Note: If party to receive the interest payments is different from the obligor, provide the name, address and Tax Identification number for that party.

Authorized Officer

Illustration 4-17 – Bond Secured by Negotiable Treasury Securities Accepted
(IV.E.11)

3809 (Office Code)

DECISION

Obligor:	:	BLM Bond Number:	_____
	:		
	:	Amount of Bond:	\$_____
	:		
	:	Effective Date:	_____

Bond Backed by Negotiable Treasury Securities Accepted

On (date) , this office received a personal bond and power of attorney in the amount of \$ _____ from the obligor named above. A U.S. Treasury (*Note, Bill, or Bond*) has been pledged to the account of the Department of the Interior-BLM at the Federal Reserve Bank, as security for the (*individual/statewide/nationwide*) bond, as confirmed by the BLM National Operations Center, Negotiable Securities Manager on (date) . The bond is accepted effective *(date the security was transferred to the Federal Reserve Bank, or date bond form was filed in State Office, whichever is later)*.

The bond constitutes coverage of all operations conducted by or on behalf of the obligor on Federal operations (*serial number*)(*or on Federal mining operations (in the State of (name) or nationwide*). The bond provides coverage of the obligor where that obligor has an interest in or is conducting operations approved/filed under the authority of any of the Acts cited on the bond form.

The bond will be maintained by this office. The pledge consists of a United States Treasury (Note, Bill, or Bond), which matures (date) . This negotiable security will be retained in the account of the Department of the Interior-BLM until (1) this office is satisfied there is no further requirement for the bond, (2) satisfactory replacement bond coverage is furnished, or (3) the maturity date of the negotiable security. If the security is still in the Department of the Interior’s account on the maturity date, the security will be suspended and held at the Federal Reserve Bank without any further interest payments to the obligor, until a final determination is made whether further bond coverage is required.

Until the security is released or forfeited, regular interest payments will be made to the obligor by the Federal Reserve Bank until the maturity date.

For individual bond: The BLM _____ Field Office has determined the cost of reclamation on BLM serial number _____ to be \$xxx. This amount is now obligated to the bond. Inasmuch as the bond amount submitted exceeds the bond amount required, an excess of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no excess remains available.

Illustration 4-17 – Bond Secured by Negotiable Treasury Securities Accepted (page 2)

For statewide or nationwide: The BLM field office(s) (or other authorized officer) shown below has determined the estimated reclamation costs associated with the surface disturbance proposed on the Plans and/or Notices to be as shown below. Those reclamation costs are now obligated under the bond as follows:

BLM Office	BLM Serial Number	Date Costs Determined	Bond Amount Required/Obligated
			\$
			\$
		Total	\$

Inasmuch as the bond amount submitted exceeds the bond amount required, an excess of \$ _____ remains available which may be applied to future bond increases required on the Plan/Notice or additional Plans and/or Notices. *OR:* Inasmuch as the bond amount submitted equals the bond amount required, no funds remain available for additional reclamation costs.

If you have any questions regarding this bond or the financial instrument, please call (author's name) at (telephone number), or write to the attention of (office code) at the address shown on the letterhead or send questions by fax to (fax number) or electronically to (author's email address).

Authorized Officer

- cc: Negotiable Securities Manager (OC-621)
 Issuing Bank
 Correspondent/Advising Bank (if applicable)
 Applicable district/field office(s) or other surface management personnel
 All state offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)

Illustration 4-18 – Notification to Reinvest Treasury Security
(IV.E.14)

3809 (Office Code)

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR
REGISTERED MAIL OR COURIER SERVICE**

Zephyr Mining Company
Address
Address

Gentlemen:

The Bureau of Land Management (BLM) has been advised that the \$_____ U.S. Treasury (*bill, note, bond*) your company pledged as security for your (*individual, statewide, nationwide*) surface management bond, BLM bond number (number), will mature on (date). You are required to maintain this bond coverage until we are notified otherwise by the BLM field office(s) which administer the mining operations for which the bond was accepted.

At maturity, before we can authorize the Federal Reserve Bank to rollover the proceeds from your U.S. Treasury security into a new security, your authorization is required. If you prefer, you can submit satisfactory replacement bond coverage which needs to be accepted by this office prior to that time.

If you have any questions, please call (*author's name*) at (*telephone number*), or write to the attention of (*office code*) at the address shown on the letterhead or send questions by fax to (*fax number*) or electronically to (*author's email address*).

Authorized Officer

Illustration 4-19 – Request for Return of Maturing Negotiable Treasury Security
(IV.E.15)

3809 (Office Code)

Memorandum

To: National Operations Center (NOC-621)
Attention: Negotiable Securities Manager

From: Authorized Officer (State Office Solid Minerals Adjudication Code)

Subject: Request for Return of Maturing Negotiable Treasury Security

On _____ (*date*), _____ (*obligor*) furnished a U. S. Treasury (*bill, note, bond*) in the amount of \$ _____ to the Bureau of Land Management (BLM). The Treasury security was placed in BLM's account at the Federal Reserve Bank on _____ (*date*) to provide security for the obligor's (*individual, statewide, nationwide*) bond, BLM Bond Number _____.

On _____ (*date*), we advised _____ (*obligor*) of the upcoming maturity date _____ (*date*) of the Treasury _____ (*bill, note, bond*). On _____ (*date*), we received satisfactory replacement security for the maturing Treasury security (*or we received information from the affected BLM [field office(s) or state offices] that bond coverage is no longer required*).

Therefore, we request you contact the Federal Reserve Bank to request that, when the security matures, the proceeds of the \$ _____ Treasury (*bill, note, bond*) be returned as follows:

A check will be sent directly to the following party:

(Name and Address of Obligor)

OR, if you have received instructions from the obligor or obligor's bank for electronic deposit of the proceeds:

Via electronic funds transfer to the account of _____ (*obligor*) at the _____ (*name and address of bank, including the ABA number*) .

Attached is a copy of the original memo concerning the establishment of the Treasury security. Questions to the bank may be directed to _____ (*name and telephone number*) .

If you have any questions regarding this bond or the financial instrument, please call _____ (*author's name*) at _____ (*telephone number*), or write to the attention of _____ (*office code*) at the address shown on the letterhead or send questions by fax to _____ (*fax number*) or electronically to _____ (*author's email address*) .

Attachment
Memo Establishing Treasury Security

Illustration 5-1 – Surety Bond Rider
(V.A)

(A surety company may execute this sample rider, with POA, in lieu of a general all-purpose rider from a surety company.)

SURETY BOND RIDER

In consideration for any premium paid for this rider and the acceptance of this rider by the Bureau of Land Management on behalf of the United States of America, this rider attaches to and is part of Surety Bond No. issued on behalf of

_____, principal, in

favor of the United States. The bond provides coverage as shown below:

Individual notice/plan of operations, BLM serial number: _____ OR

Statewide _____ OR Nationwide _____

INCREASE / DECREASE IN DOLLAR AMOUNT OF BOND COVERAGE

It is understood and agreed that _____, principal, is increasing/decreasing the coverage of this bond to the amount shown below; however, this rider shall not act to increase/decrease the actual cumulative or potential liability above the face amount of the bond, to wit:

_____ U.S. dollars (\$ _____).

BOND COVERAGE EXTENDED TO STATEWIDE / NATIONWIDE BOND

The principal hereby agrees to and extends bond coverage to include any and all operations statewide/nationwide under Title 43 CFR, subparts 3802/3809, Surface Management.

BOND COVERAGE EXTENDED TO NOTICE-LEVEL OPERATIONS

The principal hereby agrees to and extends bond coverage to include notice-level operations pursuant to regulations at 43 CFR 3809, Surface Management. *(This rider statement is to be used for bonds accepted prior to January 20, 2001, and were conditioned to only provide coverage for plans of operations.)*

Illustration 5-1 – Surety Bond Rider (page 2)

CO-PRINCIPAL

It is understood and agreed that _____, principal, is extending the coverage of the bond referenced above to include liabilities for operations conducted by the co-principal(s) shown below.

Co-Principal	By	Title
_____	_____	_____
_____	_____	_____

#####

NOTE

This coverage of obligations shall continue whether or not a plan of operations has subsequently been suspended or terminated. This rider shall not act to increase the actual cumulative or potential liability of the principal or bond above the face amount of the bond. Nothing herein contained shall vary, alter, or extend any provision or condition of this bond except as herein expressly stated.

Executed this _____ day of _____, 20____,

Principal

By Title

Business Address

Surety

By

Address

Address

Illustration 5-2 – Accepting Bond Rider
(V.B.11)

3809 (Office Code)

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
	:	Bond Amount Required: \$
	:	
Operator: <i>(if different than principal/obligor)</i>	:	Bond Amount Submitted: \$
	:	
Surety <i>(If surety bond)</i>	:	Surety Bond Number:
c/o Attorney-in-Fact	:	
	:	Date Bond Executed:

Bond Rider Accepted

Effective (date) , the BLM Office accepted the bond referenced above with (name), as principal, and underwritten by , as surety *(if surety bond)*. The bond was accepted for *(individual, statewide, nationwide)* bond coverage for operations to be conducted by *(name of obligor/operator)* as referenced above.

On (date) , we received a rider to surety bond number or BLM bond number #####. The rider (*describe the material change(s) provided by the rider, for example, extends the coverage provided under the bond from individual to statewide operations*). The rider has been examined and found satisfactory, and is therefore accepted effective (date) . *(If now a statewide bond, for example)*, The bond now provides coverage for operations conducted by (the operator) under regulations at Title 43 CFR 3809 on public lands in the State of .

(If the rider is in response to a required reclamation cost increase by the field office, also see Chapter VII of this handbook and incorporate language here from illustrations 7-3 and 7-4 as may be appropriate.)

If you have any questions regarding this bond, please call (author's name) , at (telephone number) , or write to the attention of (office code) , at the address shown on the letterhead or send questions by fax to (fax number) or electronically to (author's email address) .

Authorized Officer

cc: Applicable district/field office(s) or other surface management personnel
All state offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)

Illustration 6-1 – Notice Recognizing Merger
(VI.B.6)

3809 (Office Code)

NOTICE

Surviving Entity Name & Address :
:

Surety & Address (If surety bond) :
c/o Attorney-in-Fact) :
:

Merger (and Name Change) Recognized

This office of the Bureau of Land Management (BLM) has received acceptable evidence of the merger of _____ into _____. _____ is the surviving entity. This recognition is effective _____ (*date*, as certified by the Secretary of the State, State of _____ (*name of state*) _____ .

The BLM has documented the merger by copy of this Notice in the operational files identified on the enclosed exhibit and updated our automated records. We compiled the exhibit from operations shown on our automated records system and any list of operations you provided. We are also notifying all BLM offices of the merger by copy of this notice.

If you find additional operations of the merging parties, please contact this office. We will document the records under our jurisdiction, and if the operations are under the jurisdiction of another State Office, we will notify them.

If applicable: This merger affects the following bond(s) held by the BLM:

BLM Bond Number: _____ Amount: \$ _____ Surety/Other Identifier:
(Repeat as necessary to show all bonds)

As Applicable:

(One bond, no rider) We have updated our bond file and automated system to reflect the merger. If the principal's/obligor's name also changed, we have updated our records to reflect the correct name. No rider is necessary as the change occurred by operation of law. We are in the process of determining the total liability for the operations affected by the merger and may require increased coverage in a later action. **DO NOT PROCESS RIDERS UNLESS THE SURETY SPECIFICALLY REQUESTS APPROVAL OF A RIDER. RETURN ANY RIDERS WITH THE MERGER/NAME CHANGE RECOGNITION ADVISING THE RIDER IS NOT NECESSARY BECAUSE THE CHANGE OCCURRED BY OPERATION OF LAW.**

(One bond, name change rider – IF SURETY REQUESTS ACCEPTANCE) We have reviewed the name change rider filed with the merger documents and accepted it effective _____. We have updated our bond file and automated system to reflect the merger and name change. We are in the process of determining the total liability for the operations affected by the merger and may require increased coverage in a later action. *(If rider is not acceptable, return to surety/principal with reason.)*

Illustration 6-1 – Notice Recognizing Merger (page 2)
(VI.B.6)

We have obligated the following bonds with the estimated reclamation costs for the operations as shown below:

BLM Bond Number	Notice or Plan Serial Number	RCE/Required Bond Amount	Amount Obligated
-----------------	---------------------------------	-----------------------------	---------------------

The estimated reclamation costs will be reviewed by the BLM field offices and the required bond amount may need to be adjusted.

(New bond) You filed a new bond, BLM bond number _____ with your merger documentation. We found the bond satisfactory and accepted it effective (date) by Decision dated (date) .
(If the bond is not acceptable, return to surety/principal/obligor with reason as to unacceptability.)

If you have any questions regarding this bond, please call (author's name) , at (telephone number) , (fax number) , or (author's email address) , or write to the attention of (office code) , at the address shown on the letterhead.

Authorized Officer's signature and title

Enclosure

- cc:
Field Offices
BLM Bond Surety Group
Surface Management Agencies
Other parties as appropriate

Illustration 6-2 – Notice Recognizing Name Change
(VI.B.6)

3809 (Office Code)

NOTICE

Entity Name & Address : BLM Bond Number:
: :
Surety & Address (If surety bond) : :
c/o Attorney-in-Fact : :
: :

**Name Change Recognized
Bond and/or Rider Accepted (As Applicable)**

You filed acceptable evidence of the name change from _____ to _____.

As applicable:

Name Change With Existing Bond: The Bureau of Land Management (BLM) is recognizing the name change effective _____, as certified by the Secretary of State, State of _____. The principal/obligor automatically changes by operation of law from _____ to _____ on BLM bond number _____.

Name Change With Existing Bond And With Rider: The Bureau of Land Management (BLM) is recognizing the name change effective _____, as certified by the Secretary of State, State of _____. Even though the principal/obligor automatically changed by operation of law from _____ to _____ on BLM bond number _____, we reviewed the name change rider you filed and found it satisfactory. The rider is accepted effective date. *(If the rider is unacceptable, return it to the surety/principal/obligor with the reason as to unacceptability.)*

Name Change With New Bond: The Bureau of Land Management (BLM) is recognizing the name change effective _____, as certified by the Secretary of State, State of _____. We examined the bond you also filed and found it satisfactory. The bond is accepted effective date. *(If the rider is unacceptable, return it to the surety/principal/obligor with the reason as to unacceptability.)*

Name Change Without Bond: The Bureau of Land Management (BLM) is recognizing the name change effective _____, as certified by the Secretary of State, State of _____.

(If the name change is for that of an individual instead of a corporation, accept the name change effective the date filed in the proper BLM office. Be sure to change manual and automated records.)

The BLM has filed a copy of this notice/decision in the affected bond file(s) as well as the operational case files as identified on the enclosed exhibit. We compiled the exhibit from operations shown in our automated records and any list of operations you provided. We are also notifying other BLM offices of the name change, as appropriate.

We have obligated the following bonds with the estimated reclamation costs for the operations as shown below:

BLM Bond Number	Notice or Plan Serial Number	RCE/Required Bond Amount	Amount Obligated
-----------------	---------------------------------	-----------------------------	---------------------

Illustration 6-2 – Notice Recognizing Name Change (page 2)
(VI.B.6)

The estimated reclamation costs will be reviewed by the BLM field offices and the required bond amount may need to be adjusted.

(New bond) You filed a new bond, BLM bond number _____ with your merger documentation. We found the bond satisfactory and accepted it effective (date) by Decision dated (date) .
(If the bond is not acceptable, return to surety/principal/obligor with reason as to unacceptability.)

If you have any questions regarding this bond, please call (author's name) , at (telephone number) ,
 (fax number) , or (author's email address) , or write to the attention of (office code) , at the
address shown on the letterhead.

Authorized Officer's signature and title

Enclosure

cc:
Field Offices
BLM Bond Surety Group
Surface Management Agencies
Other parties as appropriate

Authorized Officer

cc: Surety (Home office on new bond, if appropriate)
Surety (Attorney-in-Fact and home office on prior bond, if appropriate)
By email to all BLM State Offices if nationwide bond (BLM_Bond_Surety@blm.gov)

Illustration 6-3 – Data Entry Requirements for Merger or Name Change Recognition (VI.B.7)

Bond and Surety System

Once a merger or name change notice/decision is signed, immediately change the name on the bond(s) to the surviving entity or the new name. Change the Interest Relationship of the merged or prior entity to Previously Interested Party (IR ##).

Enter Action Code 280 (merger) or 290 (name change); DE 2960, or both, as appropriate.
For a Rider:

Date: Date rider was received by processing office
Action Code 478; DE 2960;
Then Action Code 479 or 480 for acceptable or unacceptable rider

Case Recordation

Enter Action Code 817 (merger) or 940 (name change); DE 2910, or both as needed.
Date of BLM notice recognizing merger or name change
Action Remarks: Eff mm/dd/yyyy (Secretary of State's certificate date) /tie to General Remarks
General Remarks: /tie from Action Remarks/ (Former name(s)) to (New Name or Surviving Entity)
Change Proprietor Field

Illustration 7-1 – Increased Bond Coverage Required by Field Office (Operations)
(VII.B.1.a)

3809 (Office Code)
BLM Serial Number:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

NOTICE

Operator:

:
: Surface Management
:

Increased Bond Coverage Required

This office has determined there is an increase in the reclamation cost estimate (RCE) on notice/plan of operations, Bureau of Land Management (BLM) serial number #####, with _____, as operator, which results in an increase in the bond amount required for this plan/notice.

Be sure the decision adequately addresses the following:

- 1) *The reason for increasing the bond amount (example, revised environmental assessment or periodic bond review);*
- 2) *The increased reclamation costs and the corresponding bond amount required;*
- 3) *The proposed work may not begin until the increased bond amount is accepted by the State Office;*
- 4) *The Authorized Officer must set a deadline in the decision for the bond increase to be filed in the State Office; and*
- 5) *That operations may be suspended if the required bond amount is not timely submitted.*

The increase in bond coverage by \$ _____ to a minimum bond of \$ _____ is required for the following reasons (indicate specific reasons for requiring the increased bond amount, for example):

- 1. Amended plan of operations or notice-level operations has increased the area to be disturbed, requiring additional reclamation bond coverage.
- 2. A review of the reclamation cost estimates has demonstrated that due to inflation and other cost factors, the amount of the existing bond is insufficient to cover the current costs of site reclamation.

Illustration 7-1, Page 2
(VII.B.1.a)

Increased Bond Coverage Required By Field Office (Operations)

If you need information about submitting additional bonding, please read the enclosed Frequently Asked Questions, and consult our website at www.blm.gov for forms that may be completed online. You may also call the State Office Adjudication if you have additional questions.

This decision does not constitute certification of ownership to any entity named in the notice/plan of operations, recognition of the validity of any associated mining claims, or recognition of the Eco feasibility of the proposed operations. If additional time is needed, please request an extension of time in writing from this office.

Authorized Officer

Enclosure – Appeals Procedures

cc: State Office Adjudication

Illustration 7-2 – Increased Bond Coverage Required by State Office
(VII.B.7)

This notice is optional. It may be issued as follow-up by the SO adjudication, at the FO's request, when significant time has passed since the FO's decision requiring the bond increase.

3809(Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED / REGISTERED MAIL / COURIER SERVICE

NOTICE

Principal/Obligor:	:	:	BLM Bond Number:
	:	:	
Operator: (If different than bond principal)	:	:	Bond Amount Required:
	:	:	
	:	:	Current Bond Amount Accepted:
	:	:	
Surety: (If surety bond)	:	:	Surety Bond Number:
Attn: Atty-in-Fact	:	:	Bond Execution Date:

Increased Bond Coverage Required

Regulations at 43 CFR 3809 require the cost of reclamation to be covered by a bond to guarantee performance of the reclamation. On _____ (date), the Bureau of Land Management (BLM) (name) Field/District Office reviewed the reclamation cost estimate (RCE) and increased the required bond amount associated with operations conducted by _____, as operator, on notice/plan of operations number (serial number) from \$ _____ to \$ _____. The increased reclamation costs are due to _____ (reason for increase) and require additional bonding be submitted to this office. (Or, if Applicable: The regulations allow the amount of any bond to be increased when additional coverage is determined appropriate. A review of the current amount of bonding committed shows that it inadequately provides for the costs of reclaiming your operations.)

You are required to increase the current amount of bonding pledged, \$ _____, to a minimum of \$ _____ to meet the increase as required by the Field Office for the notice or plan of operations. A copy of the Field Office's determination of increased reclamation costs is enclosed for your information.

The required bond amount may be furnished either by increasing your existing bond or by submitting a new bond for either the required increase or for the new total amount of bond required. The current bond forms and information on acceptable financial guarantees are enclosed. Upon our acceptance of a new bond for the total bond amount required, we will terminate the period of liability under the prior bond and authorize a refund of any monies securing a personal bond.

Illustration 7-2 – Increased Bond Coverage Required by State Office (page 2)
(VII.B.7)

You are allowed 30-60 days from receipt of this Decision to submit the required bonding. New operations will not be allowed until the new bond amount has been accepted by the State Office, and existing operations may be suspended by the Field Office if the operator is determined to be in noncompliance. Other enforcement actions and penalties as allowed by 43 CFR 3809 may also be assessed by the Field Office.

Authorized Officer

cc: Field Office
Surety Home Office (if surety bond)

Illustration 7-3 – Obligation under Individual Bond Increased
(VII.B.12)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
	:	Required Bond Amount:
	:	
Surety: (If surety bond)	:	Surety Bond No.: <i>(If surety bond)</i>
c/o Attorney-in-Fact	:	
	:	Amount of Bond <i>(Submitted/Accepted)</i> :
	:	
	:	Execution Date:

Obligation Under Individual Bond Increased

Effective (date) , this office accepted the above-referenced bond for coverage of operations conducted by the principal/obligor on plan of operations/notice, Bureau of Land Management (BLM) serial number .

Of this (original amount) bond, (\$ dollar amount) was obligated for (plan of operation/notice number) on (date).

On (date) , the Field Office determined an increase in the bonding requirement of \$ was needed because of increased costs of reclamation (or other basis for the increased bond amount).

This additional bond requirement is now obligated to the bond described above. The total amount obligated against this bond is now (\$ dollar amount), with remaining coverage of (\$ dollar amount) available for additional amendments or modifications to the plan of operations or notice.

If you have any questions regarding this bond, please call (author's name) , at (telephone number) , (fax number) , or (author's email address) , or write to the attention of (office code) , at the address shown on the letterhead.

Authorized Officer

cc: Surety Home Office (if surety bond)
Field Office

Illustration 7-4 – Obligation Under Statewide or Nationwide Bond Increased
(VII.B.12)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Principal: : BLM Bond Number _____
 :
 : Amount of Bond Submitted: \$ _____
 :
 Surety: (If surety bond) : Surety Bond Number: _____
 :
 :

Obligation Under Statewide/Nationwide Bond Increased

Effective (date), the bond shown above was accepted by this office in the amount of \$ _____ for statewide/nationwide coverage of surface reclamation activities under 43 CFR 3809 conducted by (principal, or operator if bond was accepted from a third party). (Principal) is the principal on the bond and it is underwritten by (surety), as surety (if surety bond). (If third party bond:) The bond was accepted for activities to be conducted by (operator), as operator, according to the notice/plan of operations filed with the Bureau of Land Management (BLM) (insert field office) Field Office (FO).

On (date), the (insert field office) FO established a required bond amount /determined an increase in the bonding requirement of \$ _____ as needed to cover the reclamation cost estimate (RCE) on plan/notice number (insert plan/notice number). This Decision obligates that amount to your statewide/nationwide bond. Current obligations under BLM bond number _____ for (principal/operator) are as shown below:

BLM Serial Number	Operations Name (optional)	Field Office and Date of Most Recent Field Office RCE Determination	RCE and Bond Amount Obligated
Total obligated under nationwide bond			\$

Considering the amount of bond coverage provided and the amount of bond obligated, there remains \$ _____ available for additional operations or amendments to existing operations.

Illustration 7-4 – Obligation Under Statewide or Nationwide Bond Increased (page 2)

Any questions regarding this Decision should be directed to (author's name), at (telephone number), (fax number), or (author's email address), or to the attention of (office code), at the address shown in the letterhead.

Authorized Officer

cc: Surety Home Office (if surety bond)
Field Offices (or other reclamation specialist)
State Offices by email to BLM_Bond_Surety@blm.gov

Illustration 8-1 – Accepting Substitute Security and Returning Prior Security
(VIII.B.8)

3809 (Office Code)

REGISTERED MAIL or COURIER SERVICE (if returning CD or LC or other financial instrument)

DECISION

Obligor:	:	BLM Bond Number:	_____
	:		
	:	Required Bond Amount:	_____
	:		
Financial Institution(s):	:	Describe Pledges:	Type/Amount/Issue Date
	:		

Substitute Security Accepted
Original Security Returned

On _____ (date), this office received a (type of security, LC, CD, etc.), from _____ (name) and issued by the financial institution named above. This financial instrument is to replace the (\$ _____) (type of security), currently pledged to secure a (individual, statewide, or nationwide) bond for the above obligor and issued by the (name of financial institution).

The replacement security has been examined, found satisfactory, and is accepted effective ____ (date). Therefore, (individual, statewide, or nationwide) bond coverage continues, uninterrupted. The bond covers Bureau of Land Management (BLM) serial number(s)/notices/plans of operations conducted by ____ (name) as operator.

The replacement security is (describe the security and insert appropriate language here for that type of security, see Chapter III or IV for appropriate language).

The original security is being returned to (name of issuing financial institution or obligor per instruction from obligor), for disposition. *(If the original security was a cash pledge: A refund has been authorized and is forthcoming.)*

If you have any questions regarding this bond or the financial instrument, please call ____ (author's name), at ____ (telephone number), or write to the attention of ____ (office code), at the address shown on the letterhead or send questions by fax to ____ (fax number) or electronically to ____ (author's email address).

Authorized Officer

Enclosure (Financial Institution)

cc: Additional financial institutions, as applicable
BLM Accounts Staff (if cash bond)

Illustration 8-1 – Accepting Substitute Security and Returning Prior Security (page 2)
(VIII.B.8)

Note that for a surety bond that is being terminated because it has been satisfactorily replaced:

The termination of the period of liability does not relieve the principal of any obligation arising out of the plan of operations, applicable laws, or regulations for any liabilities that may have accrued prior to the date the period of liability terminated. However, pursuant to 43 CFR 3809.581(b), which became effective January 20, 2001, a surety is released from an obligation that accrued while the surety bond was in effect when a replacement financial guarantee covers such obligations to BLM's satisfaction. Therefore, because this decision accepts the replacement bond, the surety is released from the past obligation.

Illustration 9-1 – Period of Liability Under Bond Terminated in Part
(IX.B.3)

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

NOTICE

Principal: : BLM Bond Number: _____
 :
 :
 Surety: : Surety Bond No.: _____
 :
 : Bond Amount: _____
 :
 : Execution Date: _____

Period of Liability Under Bond Terminated in Part
Request for Additional Information

The bond described above was accepted by this Bureau of Land Management (BLM) office effective _____ (date). The bond provides that the surety may elect to terminate liability as to additional notices or plans of operations filed by, acknowledged or approved by, or acquired by the principal more than 30 days after the BLM receives of the surety’s notice of such election by the proper BLM office.

Notice of such election was received by this office on _____ (date). Therefore, the coverage of the bond will not extend to any additional or new interests in any Federal notice or plan of operations acquired or filed by the principal after _____ (*date).

This action does not release the surety from any liability on the bond for those notices and/or plans of operations to which the bond applies on or within 30 days after the notice was received, or acquired by _____ (*date).

In order for this office to verify what liabilities, if any, remain under the bond, please furnish a list of Federal notices and plans of operations, by BLM serial number, in (Name of State or all states) which you have submitted to the BLM, and/or for which you have received acknowledgment or approval, and/or for which this bond provides coverage. Also, please identify any operations for which a change of operator to you may be pending approval with the BLM so they will not be attached to the bond terminated as to future interests.

Upon your reply, we will take further action to terminate the period of liability under the above bond. If you have any questions regarding this bond, please call _____ (author’s name), at _____ (telephone number), _____ (fax number), or _____ (author’s email address), or write to the attention of _____ (office code) at the address shown on the letterhead.

Authorized Officer

cc: Surety’s Home Office
 Applicable District/Field Office(s) or other surface management personnel
 All State Offices if a nationwide bond (Post information electronically to BLM Bond Surety Group)

*NOTE: This date should be 30 calendar days following the date of receipt by the proper BLM office of the election to terminate additional liability under the bond

Illustration 10-1 – Request for Concurrence of Bond Reduction (X.B.5)

3809 (Office Code)

By Email (Where Acceptable)

From: Adjudication

To: (BLM Office/Agency from which concurrence in bond reduction is required)

Subject: Reduction of Required Bond Amount

This office currently maintains surface reclamation bond for disturbance associated with plan of operations/notice, Bureau of Land Management (BLM) serial number _____.

On (date) , we received (example: a request for reduction of the bond amount from the bond principal/operator/surety; or information from the Field Office that the bond amount required for surface reclamation on the operations could be reduced; or other request for/action of bond reduction).

According to the request/information provided, the reduction corresponds to (brief reason of reduction) . The recommendation is that the bond be reduced as follows:

Plan of Operations/Notice Serial Number: _____

Name of Operator: _____

Current Bond Amount Required: \$ _____

Bond Amount Required After Proposed Reduction: \$ _____

Please report whether your office has any objections to such reduction. We request your reply with history to this email as soon as possible. You may also print this email and fax your completed response to the BLM, _____ State Office, Adjudication at (fax telephone) . If you have any questions regarding this bond, please call (author's name) , at (telephone number) , or (author's email address) .

No Objection _____

Objection _____ (Please indicate reason for objection)

Authorized signature _____

Title _____

Office: _____

Date: _____

Illustration 10-2 – Obligation Under Bond not Reduced
(X.B.5)

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL

DECISION

Principal/Obligor: : BLM Bond Number: _____
 :
 : Required Bond Amount: _____
 :
 Surety: (If surety bond) : Surety Bond No.: (If surety bond)
 c/o Attorney-in-Fact :

Obligation Under Bond Not Reduced

Effective (date) , this Bureau of Land Management (BLM) office accepted the above-referenced bond for operations conducted by the principal/obligor on plan of operations/notice, BLM serial number _____. Of this (original amount) bond, (\$dollar amount) was obligated for (plan of operations/notice number) on (date).

On (date) , we received a request to reduce the required bond amount from bond principal/operator/surety based on (briefly recite requestor’s reason for reduction, e.g., reclamation completed to date, modification of the operations resulting in less surface disturbance, etc.).

The request was forwarded to the _____ BLM Field Office(s) for concurrence in the reduction. However, the _____ BLM Field Office/State Office has responded that the bond needs to remain in full force and effect to cover liabilities on BLM serial number _____ because: (*until such time as an inspection of the operations can be conducted by BLM and current reclamation costs determined, a reduction in the bond amount is not appropriate at this time, or other reason, as applicable.*) A copy of the Field/State Office’s reply is enclosed for your information.

If appropriate: In accordance with the Memorandum of Understanding (or other agreement as applicable) between the BLM in (state) and (agency/office), concurrence in the bond reduction must be received from (agency/office). On (date) , we received an objection to the bond reduction from that office. A copy of the agency’s reply is enclosed for your information.

Therefore, until concurrence to the reduction can be obtained from all parties, we are unable to reduce the amount of liability currently obligated to the bond. Bonding in the required amount of \$_____ remains in full force and effect until such time as a reduction is appropriate. The bond will be retained by the BLM to fulfill the reclamation requirements on notice/plan of operations number _____.

If you have any questions regarding this bond, please call (author’s name) , at (telephone number) , (fax number) , or (author’s email address) , or write to the attention of (office code) at the address shown on the letterhead.

(Appeal Paragraph)

Authorized Officer

cc: Surety Home Office (if surety)
 BLM Field Office(s)
 Other SMAs/Interested Parties as appropriate

Illustration 10-3 – Obligation Under Bond Reduced
(X.B.6)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Principal/Obligor:	:	BLM Bond Number: _____
	:	
	:	Required Bond Amount: _____
	:	
Surety: (If surety bond)	:	Surety Bond No.: (<u>If surety bond</u>)
or	:	
Financial Institution: (If LC)	:	LC Number: _____
	:	
	:	Date Executed/Issued: _____

Obligation Under Bond Reduced

Effective (date), this Bureau of Land Management (BLM) office accepted the above-referenced bond for coverage of operations conducted by the principal/obligor on plan of operations/notice, BLM serial number _____. Of this (original amount) bond, (\$ dollar amount) was obligated for (plans of operation(s)/notice number(s)) on (date(s)).

On (date), we received a request for a reduction in the bond amount of \$_____ because of (*reason given in request for the reduction in the bond amount*).

The request may be for a reduction of uncommitted funds under a statewide or nationwide bond which, after verifying the funds are not needed for operational activities pending BLM action/approval, the reduction may be granted. If applicable for specific operation(s): The request was forwarded to the _____ BLM Field Office(s). On (date), the Field Office determined a reduction in the bonding requirement of \$_____ was appropriate due to (*basis for the reduction in the bond amount*). The reduced reclamation costs result in the required bond amount being reduced to \$_____ for plan of operations/notice number _____.

If appropriate: In addition, we have also received concurrence in this reduction from the (agency/office) as required by a Memorandum of Understanding (or other agreement, as applicable) with the (State of xxx, other agency/office, etc.).

Therefore, this Decision reduces the amount obligated under the bond referenced above to \$_____. The remainder of the bond, \$_____, will be retained by the BLM pending completion of the reclamation requirements on notice/plan of operations number _____ or obligated under your SW or NW bond.

The bond now has \$_____ in uncommitted funds which may be used for future operations or amendments to existing operations.

Or, if the bond principal wants a refund of the reduced bond amount (under a personal bond secured by cash or a letter of credit:

Illustration 10-3 – Obligation Under Bond Reduced (page 2)

If the penal sum of the bond is being reduced by the principal or surety, in addition to reduction of the obligation against the bond, address the rider and include appropriate language: On date we also received a rider to the bond reducing the penal sum of the bond to \$_____. The bond has been examined, found satisfactory and is therefore accepted effective date. (Add “Rider Accepted“ to Decision heading, if this is the case.)

As requested by the bond principal/remitter, we are authorizing a partial refund of the financial instrument pledged to secure the bond.

Cash: A refund has been authorized and is forthcoming.

LC: This decision, signed by the Authorized Officer having the delegated authority to do so, constitutes the bank’s authority to reduce LC number ##### to the amended amount of \$XXX. (Note: A time deposit instrument/account (e.g., CD) cannot be reduced.)

If you have any questions regarding this bond, please call (author’s name), at (telephone number), (fax number), or (author’s email address), or write to the attention of (office code) at the address shown on the letterhead.

(Appeals Language)

Authorized Officer

cc: Surety Home Office (if surety)
BLM Field Office(s)
Other SMAs/Interested Parties as appropriate

Illustration 10-4 – Notice for Proposed Final Financial Guarantee Release
(X.B.8a)

(Date)

To: Interested Public

From: (Name of BLM office) Field Manager

Subject: Notice of Proposed Final Financial Guarantee Release

(Name of operator) conducted mining operations under 43 CFR 3809 on (###) acres located in (Township, Range, Section). The operations were conducted entirely on public lands managed by the Bureau of Land Management (BLM) (insert name of BLM field office) Field Office, located in (city, state). The current amount of the bond obligated for reclamation on this plan is \$_____.

The reclamation required for the plan of operations (BLM serial number) has been completed, and the lands have been successfully reclaimed and returned to an acceptable second use. The revegetation of the area has been monitored since the operations closed in (date/month/year). The bond principal/operator has requested that, if reclamation is deemed complete, the bonding requirement/financial guarantee obligation cease.

This notice is being posted in accordance with the regulations at 43 CFR 3809.590. The BLM will accept comments regarding the proposed final financial guarantee release for thirty (30) days from the date of posting this notice. Questions and comments can be addressed to (name of geologist/surface reclamation specialist, _____) Field Office, located at (address of BLM Field Office). Comments can also be sent electronically to (geologist/surface reclamation specialist's email address). If you have questions please call (geologist/surface reclamation specialist) at (telephone number).

Considering the comments received, the BLM will proceed to release the financial guarantee thirty (30) days after the availability of this notice.

Authorized Officer

Posted: (date)

Illustration 10-5 – Field Office Recommendation for Final Financial Guarantee Release
(X.B.8b)

3809 (Office Code)

Plan of Operations/Notice BLM Serial Number:

Name and address of Operator:

Name and address of Principal, if different than operator:

Dear _____:

On (date) , (name of operator) requested final financial guarantee release on its mining operations, Bureau of Land Management (BLM) serial number , located in (general location and legal land description) . The operations disturbed about acres of public land that have been reclaimed and returned to an acceptable second use. (Name of operator) requested that if the reclamation is deemed successful and complete, its bond be released. This BLM office has determined that (name of operator) has met the reclamation requirements of its Plan of Operations, BLM serial number *(insert serial number)*. The reclamation is complete and successful.

Per regulations at 43 CFR 3809.590, a Notice was posted at the BLM (field office) Field Office in (town) for the required 30 calendar days, beginning (date) and ending (date) . The BLM received no comments regarding the request for final financial guarantee release. Therefore, the Field Office recommends final release of your financial guarantee under 3809.590. Please be advised that in accordance with 43 CFR 3809.592, BLM's release of the continuing need for a financial guarantee does not release you from responsibility for reclamation of your operations should reclamation fail to meet the standards of the regulations at 43 CFR 3809.

By copy of this letter, we are notifying the BLM State Office of our recommendation. That office will remove the reclamation amount committed/obligated under the bond for this project.

The amount will remain unobligated under the bond and be available for future operations or for amendments to existing operations. However, if the bond principal would like the bond period terminated and a return of the funds held for the bond (as applicable for a personal bond), please contact the adjudication staff at the State Office at telephone number (telephone number) .

If you have any questions, please contact (surface reclamation specialist) at telephone number, email, address.

Sincerely,

Authorized Officer

cc: State Office Adjudication

Illustration 11-1 – Request for Report on Nationwide Bond Termination from State Office (XI.B.3)

Send by Electronic Mail

From: (Adjudicator Name)

To: Surface Management Bond Group

Subject: Request for termination of period of liability of nationwide bond
for (name of bond principal, co-principals)

The Bureau of Land Management (BLM) (state name) State Office has received a request from (name of requester) to terminate nationwide bond coverage for (name of bond principal, co-principals).

BLM Bond Number:

Principal:

Surety:

Surety Bond Number:

Bond Amount:

Bond Type: Nationwide

(Bond covers operations conducted by: Include co-principals if the bond covers operations conducted by an entity/entities other than a single bonded principal).

Please respond as soon as possible, if this bond continues to be required for the reclamation of exploration and mining activities or related obligations in your state. Please reply “with history” to this message.

Illustration 11-2 – Request for Concurrence of Bond Termination (XI.B.5)

Send by Electronic Mail

To: _____ Field Manager(s)
From: Authorized Officer (State Office Adjudication Code)
Subject: Request to Terminate Liability on Bond

This Bureau of Land Management (BLM) office has received a request to terminate the period of liability on the bond described below. Please report whether your office has any objections to such termination. We request your concurrence by your replying "with history" to this email (Or if faxed: We request your concurrence on the duplicate copy of this memorandum as soon as possible.)

Principal:
Surety:
Surety Bond Number:
Bond Amount:

(The bond covers operations conducted by: Include the operator's name if the bond covers operations conducted by an entity other than the bonded principal).

(If report is being requested from a surface management agency other than the BLM, include the BLM serial number and any common name or other identifier for the operations covered by the bond).

If by fax: In duplicate (please return signed copy to originating office). Please fax the response to (fax number).

RESPONSE

___ No objection
___ Objection (indicate reason in the space below)

Name

Title

Office

Illustration 11-3 – Status of Request for Termination of Period of Liability (XI.B.7)

3809 (Office Code)

NOTICE

Principal/Obligor: : BLM Bond Number: _____
: :
: Amount of Bond: _____
: :
Surety: (If required) : Surety Bond No.: _____
: (If surety bond)
: :
: Date Bond Executed: _____
: :

Status of Request for Termination of the Period of Liability Under the Bond

This Bureau of Land Management (BLM) office has received a request to terminate the period of liability on the bond described above. The following indicates the current status of your request:

____ Reports must be received from the following offices as to any continuing need for the bond described above:

____ Please submit a list of plans of operations and notices within the jurisdiction of this BLM state office in which the principal(s) has held an interest in operations covered by the bond since the bond was executed. When this list is received, we will request status reports from our field offices(s) as to any continuing need for this bond.

____ Each BLM state office must confirm that there is no objection to termination of the period of liability for this bond. They are being contacted on this date for their comments. Please advise each BLM state office as to any plans of operations and/or notices within that office’s area of jurisdiction in which the principal(s) has held an interest. A list of the BLM state offices and addresses is enclosed to assist you in this effort.

____ Other:

Authorized Officer

Enclosure (list of state office addresses, if applicable)

cc: All BLM state offices (adjudication)

Illustration 11-4 – Period of Liability Under Bond Terminated
(XI.B.9a)

3809 (Office Code)

CERTIFIED – RETURN RECEIPT REQUESTED

DECISION

Principal/Obligor:	:	BLM Bond Number:	
	:		
	:	Amount of Bond:	
	:		
*Surety: (If surety bond)	:	Surety Bond No.: (if surety bond)	
c/o Atty-in-Fact	:		
	:	Date Bond Executed:	
	:		
*Financial Institution: (BY COURIER SERVICE)	:	TD/LC Date Issued:	
(If personal bond secured by a time deposit or LC)	:	LC Number: (NEVER SHOW TD ACCOUNT #)	:

Period of Liability Under Bond Terminated

The period of liability under the above bond is terminated effective (****Date**), the date the Bureau of Land Management (BLM) Field Office approved the final report of abandonment and recommended release of the remaining financial guarantee.

OR

The period of liability under the above bond is terminated effective (****Date**). (*Statewide/nationwide bond*): All appropriate Bureau of Land Management (BLM) Offices have concurred in the termination of this bond. (*Plan of operations bond*): The requirements of CFR 3809.590(c) have been met and any comments have been addressed by the BLM.

OR

The period of liability under the above bond is terminated effective (****Date**), the date satisfactory replacement bonding was accepted.

For a surety bond that is being terminated because it has been satisfactorily replaced:

Please note that termination of the period of liability does not relieve the principal of any obligation arising out of the *notice/plan of operations*, applicable laws, or regulations for any liabilities that may have accrued prior to the date the period of liability terminated. However, pursuant to the regulations at Title 43 CFR 3809.581(b), which became effective January 20, 2001, a surety is released from an obligation that accrued while the surety bond was in effect when a replacement financial guarantee covers such obligations to Bureau of Land Management’s (BLM) satisfaction. Therefore, because this decision accepts a replacement bond, the surety is released from the past obligation. (*Do not return the surety bond, it is part of the permanent BLM record.*)

For a Time Deposit: The time deposit that was pledged to the Bureau of Land Management (BLM) to secure the bond is returned to the financial institution herewith. This Decision constitutes the bank’s authority to return the principal and any interest accrued on the time deposit to the depositor. In accordance with the terms of the time deposit, this Decision constitutes the Secretary of the Interior’s approval for redemption of the time deposit. By delegation of authority, the Secretary of the Interior has designated the position delegated in your state’s 1203 manual, as the Authorized Officer for this approval.

Illustration 11-4 – Period of Liability Under Bond Terminated (page 2)
(XI.B.9a)

For a Letter of Credit: Inasmuch as there is no further need for the financial pledge for the bond, this BLM office hereby returns LC No. XXXX-XXXX to (name of the financial institution which issued the LC) . (If there was an advising bank on the LC, be sure to copy this decision to the advising financial institution.) This Decision constitutes BLM authority to the bank to cancel LC No. XXXX-XXXX effective (date) .

If you have any questions regarding this bond, please call (author's name) , at (telephone number) , (fax number) , or (author's email address) , or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

Enclosure – TD/LC to financial institution

cc: Surety Home Office
New Bond Principal
Field Office(s)

****NOTE:** This will be the date that the bond is no longer necessary, generally, the date the last required memorandum, or other approved document signed by the authorized officer, consenting to termination of the period of liability, or stating there is no further bond requirement, is received in the BLM office signing this decision.

Illustration 11-5 – Request for Termination of Period of Liability Denied
(XI.B.9b)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
Surety: (If a surety bond)	:	Surety Bond No.: (If a surety bond)
c/o Attorney-in-Fact	:	
	:	Date Bond Executed:

Request for Termination of the Period of Liability Under Bond Denied

This Bureau of Land Management (BLM) office has been requested to terminate the period of liability on the bond described above. The bond cannot be terminated at this time for the following reason(s):

_____ Final reclamation on the plan of operations or notice(s) covered by the bond has not yet been approved. For more information, you may contact the following BLM field office(s):

_____ Reports must be received from the following office(s) as to any continuing need for the bond:

_____ Each BLM state office must confirm that there is no objection to termination of the period of liability on the bond. You may be able to assist the BLM offices in making the determination by advising the offices of those operations in which the principal has held any interest covered by the bond since the bond was executed.

_____ The enclosed report(s) show the objection(s) to the termination of the period of liability. The bond must remain in full force and effect until the conditions noted in the objection(s) are corrected, or the necessary work is completed. For more specific information, please contact the office originating the objection.

_____ Other:

If you have any questions regarding this bond, please call (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

(Appeal Paragraph)

Authorized Officer

Enclosure(s) (If Applicable)

cc: Surety Home Office
 BLM State Offices (If nationwide Bond)
 Field Offices (if mentioned in the reason for denial)

NOTE: This format may also be used to advise an obligor on a personal bond of denial of termination of the bond.

Illustration 11-6 – Unconditional Release of Bond Liability Denied
(XI.B.13)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
Surety: (If a surety bond)	:	Surety Bond No.: (If a surety bond)
c/o Attorney-in-Fact	:	
	:	Date Bond Executed:

**Request for Unconditional Release of Past,
Present and Future Liabilities Under Bond Denied**

On (insert date) this office received a letter from (insert party who sent in the letter), requesting an unconditional release on all past, present, and future liabilities under Bureau of Land Management (BLM) bond number _____, (Surety bond number, if surety bond _____), with (Name) , as principal and underwritten by (Name) , as surety.

According to the terms of the bond, the authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the plan of operations have been met. When the BLM field office(s), and other agencies, as required, concur in termination of the period of liability, it means that those offices have determined, to the extent that they can, all terms and conditions of all plans of operations and/or notices covered by the bond have been completed. Only when such a determination has been made can this office terminate the period of liability, that is, set a specific time after which no new liability or cause of action may accrue under the bond.

The regulations also do not allow any complete cancellation or an “unconditional release” of the surety from any liability whatsoever unless the bond is replaced and all previous obligations are adequately covered by the replacement bonds (43 CFR 3809.581(b)).

The bond was accepted to provide coverage for operations and interests held by the principal during the period from the date of bond acceptance until the BLM determined, to the best of its knowledge, that the bond was no longer required and terminated its period of liability effective (Date). The termination of liability would not preclude our assessing liability against the principal and surety if, for example, 2 years after termination of the period of liability, the BLM discovers that reclamation and restoration was improperly performed or has caused serious environmental damage. The fact that the period of liability of the bond has been terminated means only that the exact date has been set, beyond which no new liability or cause of action may accrue. Therefore, we cannot grant you an unconditional release of your bond.

You indicate that our failure to provide total cancellation of the bond or termination of all liability under the bond or return the bond (form 3809-1) may affect the return of the principal’s collateral securing the bond. We regret that we cannot be of more help in this matter; however, it has always been the BLM’s position that the financial arrangements made in regard to collateral for a surety bond is a private matter, between the principal and the surety, and the collateral for a letter of credit (submitted to secure a personal bond) is a private matter between the bank and the letter of credit applicant. The BLM may not interfere in the matters between the surety and principal or the bank and the obligor.

If you have any questions regarding this bond, please call (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

(Appeals Paragraph)

Sincerely,

Authorized Officer

Enclosure

bc: Field Office (if individual bond)

Illustration 12-1 – Notice of Noncompliance and Orders for Compliance
(XII.B.3)

3809 (Office Code)

This Decision is to be issued by the Field Office

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

DECISION

Name and Address of Operator:

: Plan/Notice Serial Number:
:
: Bonded Amount:
:

Notice of Noncompliance

A compliance examination of the (*insert name of operator*) mining operation under Plan of Operations (*serial number*) in (*project location*), was conducted on (*date*). (*Provide a brief description of all pertinent facts discovered through the inspection process. The purpose of this section and the following section, which deals with a review of the records, is to provide sufficient information to anyone who might read the order for them to determine the nature of the violation(s) that prompt the order.*)

A review of the Bureau of Land Management (BLM) records indicates the following facts: (*Refer to any filing made by the operator and correspondence between the operator and BLM that are pertinent to the issuance of the order.*) Based on our inspections and records, the (*insert name of operator*) activity is unauthorized and is in violation of (*list the laws that are being violated such as the Federal Land Policy and Management Act (FLPMA), etc.*). Specifically, (*insert name of operator*) is in violation of the following regulations: (*List those regulations under 43 CFR 3809 that the operator/claimant is violating. A Noncompliance order needs to be tied to a violation of one or more of the prohibited acts listed in 43 CFR 3809.605. As an example:*)

(*Insert name of operator*) has failed to stockpile the necessary soil material as required in its approved Plan of Operations. Failure to follow the approved Plan of Operations constitutes unnecessary or undue degradation and is a prohibited act under 43 CFR 3809.605(a).

Under authority of 43 CFR 3809.601(a), (*insert name of operator*) is ordered, within (*specify the time by which the operator must take corrective action to resolve the noncompliance, generally not to exceed 30 days*) from receipt of this order to: (*List the specific actions that the claimant/operator must take to comply with the order. These actions must be clear and concise, leaving little room for interpretation. The actions are listed with the understanding that if they are taken by the claimant/operator, the order will be lifted and the operations will be in compliance with respect to this order.*)

If (*insert name of operator*) does not comply with this order, the BLM may take further action against (*insert name of operator*) pursuant to 43 CFR 3809.601(b) and issue a Suspension Order for all or part of the (*insert name of operator*) operation. Additionally, action could be taken under 43 CFR 3809.604 or 3809.700. (*Depending on the nature of the noncompliance, you may want to cite the specific regulations language that mention the BLM may request the United States Attorney to institute a civil action in United States District Court for an injunction to enforce this order; the collection of damages resulting from*

unlawful acts (see 43 CFR 3809.604); arrest and trial under section 303(a) of the FLPMA; fines up to \$100,000 or the imprisonment (see 43 CFR 3809.700)).

Insert Appeal paragraph and stay information.

Any questions regarding this Decision should be directed to *(insert program specialist name)* at *(telephone number)*, *(fax number)*, or *(email address)*, or write to the attention of *(office code)* at the address shown in the letterhead.

Authorized Officer

2 Enclosures

cc: Surety (c/o Attorney-in-Fact) (If surety bond)
Surety (Home Office) (If surety bond)
Claimant(s) (if other than operator)
Regional Solicitor
SO Adjudication

Illustration 12-2 – Field Office Letter to Surety Requiring Bond Performance
(XII.B.6c)

3809 (Office Code)
BLM Serial Number(s)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
Surety: (If a surety bond)	:	Surety Bond No.: (If a surety bond)
c/o Attorney-in-Fact	:	
	:	Date Bond Executed:
	:	

Performance under Bond Required

By Decision dated (date), this Bureau of Land Management (BLM) office issued a Notice of Noncompliance ordering (name of operator) to properly restore and reclaim the lands covered by notice level operations/plan of operations (serial number and legal description).

(If this letter is requesting compliance for more than one operation, list requirements accordingly, including individual surety numbers, BLM bond numbers, if applicable.)

The Notice of Noncompliance required *(example: specified work to begin immediately or by specified date; amended plans for restoration and reclamation to be submitted within 30 days from receipt of the notice; that the actual work be completed within ___ days; or other action required in notice of noncompliance)*. The return receipt for the certified letter *(or courier tracking proof)* containing these orders shows that the operator received the Notice of Noncompliance on (date). *(Example: The specified work was to begin immediately or by (date); the amended plans for restoration and reclamation were to be submitted within 30 days from receipt of the notice; that the specified work was to be completed within ___ days; or other action required in notice of noncompliance)*.

Because (name of operator) has not complied with the orders contained in the Notice of Noncompliance, and (name of surety) is the surety for the bond guaranteeing compliance with the terms of the *(notice-level operations/plan of operations)*, including reclamation and restoration operations, (name of surety) must perform one of the following actions:

1. Require the operator to begin the specified work within 30 days (or such other reasonable period of time, based on the seasonal factors involved) and continue the work diligently to completion; OR
2. Directly enter into a contract such that the specified work will begin within 30 days (or such other reasonable period of time) and continue diligently to completion, with the contractor **directly** billing the surety for the work done; OR
3. Authorize in writing within 30 days for the BLM to act as the surety’s agent to contract and oversee the performance of the specified work, with the contractor **directly** billing the surety for payment. In this case, the surety must pay the United States (BLM) an additional percent (check current amount) of the payment amount to compensate the United States for

administrative costs for the contract(s) (not to exceed the penal sum of the bond).

Illustration 12-2 – Field Office Letter to Surety Requiring Bond Performance (page 2)

4. Submit within 30 days the penal sum, \$_____, of surety bond number _____, to the BLM State Office at the following address:

State Office Address
Attn: Adjudication (Office Code)

If none of the above actions are commenced within the specified times, the United States will take action to collect the forfeited amounts of the following bonds for the costs of reclamation and restoration of land covered by the notice(s)/plan(s) of operations shown below plus an additional percentage of _____% (check current amount) for administrative costs not to exceed the penal sum of the bond.

(List applicable operations, BLM serial numbers, BLM bond numbers, surety bond numbers, names of principals/co-principals).

Additional time to comply with this letter must be requested in writing by the surety and must be granted by this office. If you have any questions, please contact (surface reclamation or other contact person's name and telephone number and email address).

If you have any questions regarding this bond, please contact (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

(Appeals Language)

Sincerely,

Authorized Officer

cc: Operator (if other than bond principal)
Claimant(s) (if other than the operator)
SO Adjudication
Plan/Notice Case File
County/State, as appropriate

Illustration 12-2 – (Nevada SO Sample) Field Office Letter to Surety Requiring Bond Performance
(XII.B.6c)

Note: This is a sample Decision issued by the NVSO and is a combination of Illustrations 12-2 and 12-4

3809 (Office Code)
BLM Serial Number(s)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

Decision

Surety:	:	:
	:	Surety Bond Number:
	:	Surety Bond Amount:
	:	:
	:	:
	:	:
Principal:	:	:
	:	BLM Bond Number:
	:	Bond Amount:
	:	:

Bond Performance Required

The Bureau of Land Management (BLM) (*insert appropriate BLM state office*) currently holds the surety bond shown above with (*insert principal's name*) as principal, and underwritten by (*insert surety's name*) as surety. The bond provides surface reclamation coverage for operations conducted by the principal on Plan of Operations (POO) (*insert POO number*).

By Decision dated (*insert date of decision*), the BLM (*insert field office name*) issued a Notice of Noncompliance ordering (*insert principal name*) to provide a Closure Plan and cost estimate for POO (*insert POO number*). The return receipt for the certified letter containing these orders shows that (*insert principal name and date the Notice of Noncompliance was received*). On (*insert date*), a second Notice of Noncompliance was issued and was received by (*insert principal name and date the notice was received*).

Because (*insert principal name*) has not complied with the orders contained in the Notice of Noncompliance and (*insert surety name*) is the surety for the bond guaranteeing compliance with the terms of POO (*insert POO number*), including reclamation and restoration operations, (*insert surety name*) must perform one of the following actions:

1. Require the operator to begin the specified work within 30 days and continue the work diligently to completion; OR

2. Directly enter into a contract such that the specified work will begin within 30 days and continue diligently to completion, with the contractor **directly** billing the surety for the work done; OR
3. Authorize in writing within 30 days for the BLM to act as the surety's agent to contract and oversee the performance of the specified work, with the contractor **directly** billing the surety for payment. In this case, the surety must pay the United States (BLM) an additional percent (6-10%) of the payment amount to compensate the United States for administrative costs for the contract, not to exceed the penal sum of the bond.
4. Submit within 30 days the penal sum, (*insert amount of bond and identifying number of the bond*), to the (*insert appropriate state office*) at the following address:

Bureau of Land Management
(*insert applicable address for the SO*)

If none of the above actions are commenced within the specified times, the United States will take action to collect the forfeited amount of the bond for the costs of reclamation and restoration of land covered by POO (*insert POO number*) plus an additional percentage for administrative costs not to exceed the penal sum of the bond.

Appeals Paragraph and Stay Information

Any questions regarding this Decision should be directed to (*insert name of adjudicator*) at (*insert appropriate telephone number*), or send electronic mail to (*insert email address of adjudicator*).

Authorized Officer

Enclosure
As stated above

Illustration 12-3 – Request for Report of Liabilities on Statewide or Nationwide Bond (XII.C.5)

Send by email to BLM_Bond_Surety@blm.gov

3809 (Office Code)

To: Applicable State Offices and/or Field Offices
From: Authorized Officer (State Office Adjudication Code)
Subject: Review of Liability Under Bond (BLM Bond Number)

The Bureau of Land Management has received a default report from our _____ Field Office for the notice(s)/plans of operation(s) identified below and the Field Office has requested initiation of collection procedures under the applicable bond(s), BLM bond number(s) _____.

Please respond by “reply with history” to this message within 15 days if there are any liabilities under this bond for operations within your area of jurisdiction. If your response will take longer than 15 days, please advise us as to when your response to this request will be completed.

If you have any questions regarding this bond, please contact (author's name) , at (telephone number) , (fax number) , or (author's email address) , or write to the attention of (office code) at the address shown on the letterhead.

Illustration 12-4 – Demand for Payment Under Surety/Personal Bond
(XII.C.7 and XII.D.7)

3809 (Office Code)

(Modify this decision for your specific situation and whether you have a surety bond or a personal bond. The FO may issue this decision or the FO may request the SO to issue.)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
	:	Amount of Bond:
	:	
Surety (if surety bond):	:	Surety Bond Number:
c/o Attorney-in-Fact	:	
	:	Date Executed:

**Default Determined
Payment Under Bond Required**

The Bureau of Land Management (BLM) _____ Field Office determined the cost of reclaiming the surface disturbance associated with notice/plan of operations serial number _____ to be \$ _____. Effective (date) this office accepted the bond referenced above with _____, as principal, *(and underwritten by _____, as surety, if surety bond)*. If the bond principal is not the operator: The bond was accepted from (principal), as a third-party surety for operations conducted by the operator, (name of operator).

By a report dated (date) (copy enclosed), this office was notified of the unresolved default on the notice/plan of operations. Included with the report is documentation of the attempts made by the _____ Field Office to correct the problem(s). By Decision (Notice of Noncompliance) issued (date), the _____ Field Office determined that (operator) was not conducting operations in compliance with the terms and conditions of the notice/approved plan of operations. The Decision ordered (operator/surety, if surety) to (restate the requirements as specified in the notice of noncompliance and in the previous letter(s) to surety/operator/bond principal). The (operator/surety, if surety) did not comply with the performance requirements as specified in the Notice of Noncompliance. (If applicable, subsequent attempts have been made by Field Office/State Office to obtain reclamation of the disturbed lands from the operator, as well as from (name of surety) by letter(s)/Decision(s) issued (date(s)) (copy(ies) enclosed). To date, the required reclamation has not been performed by the operator or the surety as required by the _____ Field Office.

Because you are in default of the terms and conditions on notice/plan of operations (Serial no.) (or all plans covered by the bond), payment under all applicable bond(s), as described, is required in the amount of \$ _____ which represents reclamation costs of \$ _____, *(and if applicable, include the amount of any interest, administrative fee, etc. also due, not to exceed the penal sum of the bond. Excess monies must be obtained from the operator.)*

(If a personal bond secured by a LC or a time deposit, use modified Illustrations 4-6 and 4-7, or 4-14 respectively, for the remainder of this decision. If a personal bond secured by cash, you may use language in Illustration 12-11.)

Illustration 12-4 – Demand for Payment Under Surety/Personal Bond (page 2)

(If a surety bond):

Therefore, payment under the bond is required in the amount of \$_____. Payment is to be made to the following BLM office:

United State Department of the Interior
Bureau of Land Management
_____ State Office
Attn: Adjudication
Address

This debt is due in full not later than (# days) from the date of this Decision, that is not later than (specify date) . Or: This debt is due in full not later than (# days) from the receipt of this Decision.

Failure to make full payment within the time allowed will result in the BLM's recommendation to the Department of the Treasury to remove (name of surety) from the list of certified, acceptable sureties (Act of September 13, 1982 (31 U.S.C. 9301 *et seq.*)) to underwrite a surety bond for the Federal Government.

Also, failure to make full payment within the time allowed may result in the initiation of judicial procedures to secure payment. Should it become necessary to file suit against (name of surety) in Federal District Court, the U.S. Justice Department has indicated that it will seek an additional surcharge of ten (10) percent based on Federal Debt Collection Procedures Act of 1991 (28 U.S.C. 3011).

Optional: This debt is due in full not later than _____. Failure to make the full payment by the due date may also result in your being charged the prompt payment interest rate as determined by the Bureau of Public Debt, Fiscal Service, Department of the Treasury (currently 6.75 percent) as published at 64 Fed. Reg. 71851 (Dep't. Treasury 1999).

By copy of this decision, all appropriate offices and parties are being notified of this demand for payment.

If you have any questions regarding this bond, please contact (author's name) , at (telephone number) , (fax number) , or (author's email address) , or write to the attention of (office code) at the address shown on the letterhead.

(Appeals Language)

Authorized Officer
Deputy State Director, Minerals Management

1 Enclosure

Copy of Surety Bond Number(s)

cc: Surety Home Office
Operator (if other than principal)
SO Adjudication or Field Office(s) (*depending which office issued the decision*)
County/State, as appropriate

Illustration 12-5 – Memorandum to Treasury Department Requesting Assistance
(XII.C.10a)

3809 (Office Code)

BLM Bond No.
Surety Bond No.

U.S. Department of the Treasury - FMS
Surety Bond Branch
3700 East West Hwy., Rm. 6F01
Hyattsville, MD 20782

Ladies and Gentlemen:

Enclosed is a report with appropriate background information concerning a default in payment required under a surety bond covering a Federal plan of operations for mining operations under § 302(b) and 303 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1732(b) and 1733). The surety, (name), failed to render the required payment under the bond to the Bureau of Land Management, _____ State Office when requested to do so by this office.

We recommend that the surety's certification and acceptability be reviewed and reconsidered by the Department of the Treasury.

If you have any questions regarding this bond, please contact (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

Enclosure

Distribution:
National Operations Center (OC-621)
WO-320

Illustration 12-6 – Memorandum to the Solicitor’s Office Requesting Judicial Action
(XII.C.10b)

3809 (Office Code)

Memorandum

To: Regional Solicitor, _____ Region

From: State Director, (State)

Subject: Request for Judicial Action Against Surety Company for Bond Default

Attached is a summary of background information and a copy of the bond file concerning a default in contractual obligations under a bond and failure to comply with the Noncompliance Order dated _____. We request that you initiate appropriate judicial action to secure payment for the cost of reclamation of the lands affected by the notices/plans of operations identified in the decision.

If you have any questions regarding this bond, please contact (author’s name), at (telephone number), (fax number), or (author’s email address), or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

1 Attachment

1- Copy of Bond, actions taken and correspondence for default and collection

cc: Surety
WO (320)
Field Office(s)

Illustration 12-7 – Notice of Initiation of Judicial Action
(XII.C.10c)

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

NOTICE

Principal/Obligor:	:	BLM Bond Number:
	:	
	:	Amount of Bond:
	:	
*Surety:	:	*Surety Bond Number:
c/o Attorney-in-Fact	:	
	:	*Date Executed:

Payment Under Bond Not Received
Judicial Action Requested

By Bureau of Land Management (BLM) Decision dated (date) (copy enclosed), you were required to forfeit \$ _____ under the bond(s) identified below:

Principal/Obligor:
 *Surety Bond Number:
 Amount:
 Notice/Plan of Operations/Statewide/Nationwide:
 BLM Bond No.

You were allowed ____ days from the date of receipt of the above-cited Decision within which to make the payment to the _____ State Office at (address).

Our records show you received the Decision on (date), and payment was to be made no later than (date). To date, we have not received your payment of the bond.

We have forwarded appropriate information to the Office of the Regional Solicitor *(or the solicitor's office used by your BLM office)* to pursue the matter judicially under 43 CFR 3809.604 and/or 3809.700,* and to the Department of the Treasury for its reconsideration of the surety as certified to issue bonds for of agencies of the U.S. Government.

If you have any questions regarding this bond, please contact (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

Enclosure

cc: WO (320)
Field/Regional Solicitor
All BLM State Offices

NOTE: Omit these portions of this decision if you are requesting judicial action on a personal bond.

Illustration 12-8 – Bond Restoration Required
(XII.D.13)

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED OR REGISTERED MAIL OR COURIER SERVICE

DECISION

Principal/Obligor:	:	BLM Bond Number:
	:	
	:	Bond Amount:
	:	
Surety: (If surety bond)	:	Surety Bond No.: (If surety bond)
c/o Attorney-in-Fact	:	
	:	Execution Date:

Bonding Required

This Bureau of Land Management (BLM) office has received the following payment(s) from the surety (or obligor) on the bond described above as required in response to a demand for the reclamation bond for (Notice/Plan of Operations number:). This payment has caused the amount of coverage under the bond to be reduced by the amount paid. Therefore, your bond no longer meets the minimum amount required by the Authorized Officer. In order to correct this situation, you must take one of the following actions:

- (1) File a rider to your present bond, executed by you (*and the surety*), stating that the face amount of the bond is restored to \$____, its original amount; or
- (2) File a new bond for the full amount of \$_____. Upon our receipt and acceptance of a satisfactory replacement bond, the period of liability of the previous bond will be terminated; or
- (3) File individual bonds (or statewide bonds) for all operations now covered by the bond in default. These new bonds must expressly assume any present liability on the bond in default attributable to the specific notice or plan of operations (or State(s) subject to coverage).

You are allowed 90 days from receipt of this Decision within which to correct the present default in bond coverage or to file acceptable new bonds to remedy the default. If, in the interim period, any exploration or mining sites are properly abandoned and reclamation of the surface is accomplished to the satisfaction of the Authorized Officer, you will not be required to maintain bond coverage for those specific sites.

If you fail to provide proper bond coverage within the specified time allowed, the notices or plans of operations requiring bond coverage are subject to cancellation by the BLM and all operations upon them will cease until bond coverage is provided to and accepted by the BLM. Failure to comply with this decision will result in the issuance of decisions to suspend operations and/or commence judicial proceedings.

If you have any questions regarding this bond, please contact (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

(Appeals Language)

Authorized Officer

cc: Surety Home Office (If surety bond)

Field Office(s)

Illustration 12-9 – Terminating Surety’s Liability Following Payment of Bond
(XII.C.13)

3809 (Office Code)

CERTIFIED—RETURN RECEIPT REQUESTED

DECISION

Surety:	:	Surety Bond Number:
c/o Attorney-in-Fact	:	
	:	Amount of Bond:
	:	
	:	Date Executed:
	:	
Principal:	:	BLM Bond Number:
	:	

Surety Payment Received
Period of Liability Under Bond Terminated

Effective (date), this Bureau of Land Management (BLM) office accepted the surety bond referenced above with _____, as principal, and underwritten by _____, as surety. The bond was accepted to provide for the reclamation on notice/plan of operations, BLM serial number _____ in the amount of \$_____ as determined by the BLM _____ Field Office by letter/Decision dated _____.

(Include a brief history of correspondence with operator, bond principal, surety concerning orders for reclamation of the disturbed lands and the parties’ failure to comply with the requests for reclamation which resulted in the subject payment.) Therefore, on (date), this office demanded payment of surety bond number _____ in the amount of \$_____.

On (date), we received payment from (surety) in the amount of \$ _____. This payment fulfills the surety’s obligations under the bond. Therefore, the period of liability under surety bond number _____ is terminated effective (date), and the surety is released from any further obligations under the subject bond. At the time the BLM, or its authorized representative, has completed the required surface reclamation, the BLM will refund any residual amount of the payment under the bond to the surety.

If you have any questions regarding this bond, please contact (author’s name), at (telephone number), (fax number), or (author’s email address), or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

cc: Surety Home Office
Field Office(s)
Other Interested Parties, as applicable

(Alter this decision accordingly if surety met its bond obligation by performing the required reclamation up to the

penal sum of the bond.)

Illustration 12-10 – Demand for Payment by Surety Following Partial Payment by Surety (XII.C.17.a(1))

3809 (Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED or REGISTERED MAIL OR COURIER SERVICE

DECISION

Surety: : BLM Bond Number: _____
 c/o Attorney-in-Fact : :
 : : Surety Bond Number: 137808720
 : :
 : : Amount of Bond: \$210,000
 Principal: : :
 : : Date Executed: November 24, 1995
 : :

Partial Payment Received
Remaining Payment Under Bond Required

The _____ Bureau of Land Management (BLM) Field Office determined the cost of reclaiming the surface disturbance associated with notice/plan of operations serial number _____ to be \$_____. Effective (date) this office accepted the surety bond referenced above with (name), as principal, and underwritten by (surety) _____, as surety.

To date, (surety) has tendered the amount obligated under the statewide bond for (ex., specify operations or all but two) operations obligated under the statewide surety bond: (serial numbers: _____). **The required amounts are shown below. Your payment of these bond amounts remains outstanding. BLM demands payment of the total remaining bond amount, \$ _____ (should match amount below, e.g., \$1,859,700).**

Plan Number	Plan Name	Bond Amount		Date Payment Received
		Obligated	Paid	
NVN-77860	Kings Mine	911,800	911,800	September 19, 2000
NVN-76940	Horse Canyon Mine	303,500	(303,500)	U N P A I D
NVN-76960	Red Horse Mine	1,556,200	(1,556,200)	U N P A I D
Total		2,771,500	911,800	

Therefore, payment under the bond, is required in the amount of \$1,859,700. Payment is to be made to the following BLM office:

United State Department of the Interior
 Bureau of Land Management
 Attn: Adjudication (Office Code)
 Address

This debt is due in full immediately. OR
This debt is due in full 30 calendar days from the date of this Decision. OR
This debt is due in full 30 calendar days from your receipt of this Decision. OR
As may be decided by your office or as suggested by your solicitor's office.

Illustration 12-10 – Demand for Payment by Surety Following Partial Payment by Surety (page 2)

Failure to make full payment within the time allowed will result in the BLM's recommendation to the Department of the Treasury to remove United States Fidelity and Guaranty Company from the list of certified, acceptable sureties (Act of September 13, 1982 (31 U.S.C. § 9301 *et seq.*)).

Also, failure to make full payment within the time allowed may result in the initiation of judicial procedures to secure payment under 43 CFR 3809.604 and/or 43 CFR 3809.700. Should it become necessary to file suit against National Fire Surety Company in Federal District Court, the Justice Department has indicated that it will seek an additional surcharge of ten (10) percent based on Federal Debt Collection Procedures Act of 1991 (28 U.S.C. § 3011).

This debt is due in full not later than (date), (if your office decides to set a specific date). Failure to make the full payment by the due date may result in your being charged the prompt payment interest rate as determined by the Bureau of Public Debt, Fiscal Service, Department of the Treasury as published at 64 Fed. Reg. 71851 (Treasury, 1999).

By copy of this decision, all appropriate offices and parties are being notified of this demand for payment.

If you have any questions regarding this bond, please contact (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

(Appeals Language)

Authorized Officer

Enclosure

cc: Surety Home Office
Office of the Field/Regional Solicitor
Field Office(s)

Illustration 12-11 – Personal Bond Appropriation
(XII.D.10)

3809(Office Code)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED or REGISTERED MAIL

NOTICE

Obligor: : BLM Bond Number:
:
:

Personal Bond Appropriated

On (Date), the Bureau of Land Management (BLM) accepted a \$_____personal bond and power of attorney, secured by a (Treasury security, LC, CD), from the above obligor (BLM Bond No.).

Our (Name) field office has provided this office with documentation detailing their unsuccessful efforts to obtain reclamation under the terms of (plan of operation or notice number). Because the obligor did not perform the reclamation as ordered by the authorized officer's letter dated (date), the Field Office requested that the BLM State Office initiate collection of the funds which secured your reclamation bond.

We sent you a copy of the correspondence negotiating the funds *(Illustration 12-4)* on (date) *(if funds were other than cash)*.

The cash proceeds from the security were placed in this office's reclamation account on (Date). We hereby advise the obligor named above that, in accordance with the terms of the personal bond and the power of attorney given to the Secretary of the U.S. Department of the Interior, we have appropriated the \$_____proceeds for failure of the obligor to adequately reclaim *(plan of operations or notice)* BLM serial number _____.

If you have any questions regarding this bond, please contact (author's name), at (telephone number), (fax number), or (author's email address), or write to the attention of (office code) at the address shown on the letterhead.

Authorized Officer

cc: Field Office(s)
BLM Accounts Staff