

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**

**CASE NO. 16078**

OCT 31 2018 4:04:53

**IN THE MATTER OF THE:**

**PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL  
ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8,  
AND 19.15.25 NMAC**

**OIL CONSERVATION DIVISION'S  
PRE-HEARING STATEMENT ON REHEARING**

The Oil Conservation Division through its counsel files the following Pre-hearing Statement.

**PARTIES AND ATTORNEYS**

Oil Conservation Division

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**STATEMENT OF THE CASE**

The Oil Conservation Division (Division) filed an application on March 28, 2018, proposing amendments to the rules concerning operator financial assurance and related matters, amending

various sections of rules 19.15.2, 19.15.8, and 19.15.25 NMAC. On August 20, 2018, after hearing and deliberation, the Commission adopted Order No. R-14834, approving the Division's proposed amendments, with certain changes, as set forth in Exhibit A to that order. On October 1, 2018, the Commission adopted Order No. R-14834-A, granting a rehearing in this case with the proviso that:

The rehearing shall be limited to a review of the scope of the wells covered by the financial assurance requirements of 19.15.8 NMAC, and, *in particular*, to the applicability of 19.15.8 NMAC to wells which are covered by federal financial assurance.

Order R-14834 further directed the Division to provide proposed amendments to 19.15.8.9 to address the concerns raised by the Commission."

In the rehearing set on November 15, 2018, amendments the Division has proposed, pursuant to that directive, which provide that the financial assurance requirements of 19.15.8 NMAC, as amended, will not apply to wells subject to federal financial assurance requirements.

#### WITNESSES

*Daniel Sanchez, Compliance and Enforcement Manager, Oil Conservation Division of the Energy, Minerals and Natural Resources Department:* Mr. Sanchez has served as Compliance and Enforcement Manager for the Division for approximately eleven years. His responsibilities in that position include assuring that oil and gas operators comply with the financial assurance requirements of 19.15.8 NMAC.

Mr. Sanchez' testimony will include a review of the rule amendments the Division has proposed in response to Commission Order No. R-14834, and the Division's past practice of not requiring state financial assurance

Mr. Sanchez' testimony is expected to last 15 minutes.

#### EXHIBITS

- [1] Proposed Rule Amendments
- [2] Comparison of Changes Approved in Order R-14834 to Changes Now Proposed
- [3] Certificate of Notice executed by Florene Davidson
- [3] Applicable federal well-plugging financial assurance regulations

**PROCEDURAL MATTERS**

The Division's counsel knows of no procedural matters that the Commission needs to address.

Respectfully submitted,

A handwritten signature in blue ink, reading "David K. Brooks", written over a horizontal line.

David K. Brooks  
Assistant General Counsel  
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Resources Department  
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Attorney for the Oil Conservation Division

Certificate of Service

I hereby certify that the Oil Conservation Division's Pre-Hearing Statement was served by e-mail on 11/15, 2018.

Gary W. Larson  
New Mexico  
P.O. Box 1056  
Santa Fe, NM 87504  
[glarson@hinklelawfirm.com](mailto:glarson@hinklelawfirm.com)

A handwritten signature in blue ink that reads "David K. Brooks". The signature is written in a cursive style and is positioned above a horizontal line.

David K. Brooks  
Assistant General Counsel, EMNRD

## OCD EXHIBIT 1

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This is an amendment to 19.15.8 NMAC, amending Sections 1, 3, 9 and 14 effective //2018.

**19.15.8.1 ISSUING AGENCY:** ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission.  
[19.15.8.1 NMAC - N, 12/1/2008; A, //2018]

**19.15.8.3 STATUTORY AUTHORITY:** 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, [NMSA 1978,] Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.  
[19.15.8.3 NMAC - N, 12/1/2008; A, //2018]

### **19.15.8.9 [FINANCIAL ASSURANCE FOR WELL PLUGGING] CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:**

**A. Applicability.** ~~[A person]~~ An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well ~~[on privately owned or state owned lands]~~ within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with ~~[division]~~ commission rules, unless the well is covered by federally required financial assurance.

**B.** A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

~~[C. The division accepts three forms of financial assurance: a one well financial assurance that covers a single well, a blanket financial assurance that covers multiple wells, and a blanket plugging financial assurance for wells in temporarily abandoned status. The operator shall cover a well that has been in temporary abandonment for more than two years by either a one well financial assurance or a blanket plugging financial assurance for wells in temporarily abandoned status, except that the division may waive the requirement of a one well financial assurance for a well that is shut in because of the lack of a pipeline connection. The division may release the one well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well. The division may release a blanket plugging financial assurance for wells in temporarily abandoned status upon the operator's or surety's written request after the wells are plugged and abandoned in accordance with 19.15.25 NMAC or are returned to production if a blanket financial assurance covers the wells or if the operator files a one well financial assurance for each well of the operator's wells in temporarily abandoned status; upon the operator's or surety's written request, the amount of the operator's blanket financial assurance for wells held in temporarily abandoned status may be reduced in accordance with the number of wells the operator elects to cover by said financial assurance.]~~

#### **D. Amounts.**

~~(1) A blanket financial assurance shall be in the amount of \$50,000 covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond.~~

~~(2) A one well financial assurance shall be in the amounts stated below in accordance with the well's depth and location.~~

~~(a) Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval and San Juan counties, New Mexico: \$5000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.~~

~~(b) All other counties in the state: \$10,000 plus \$1 per foot of projected depth of proposed well or measured depth of existing well.~~

~~(3) The appropriate division district office may approve revised plans for an actively drilling well for drilling as much as 500 feet deeper than the depth stated on the well's financial assurance. A well to be drilled more than 500 feet deeper than the depth stated on the well's financial assurance shall be covered by a new financial assurance in the amount prescribed for the new projected depth.~~

~~(4) The amount of the one well financial assurance required for an intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.~~

~~(5) If an operator elects to cover wells held, or which may be held, in temporary abandonment by a blanket plugging financial assurance for wells in temporarily abandoned status, the operator shall do so in the amounts stated below in accordance with the number of wells covered by the blanket plugging financial~~

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~~assurance for wells in temporarily abandoned status:~~

~~(a) A blanket financial assurance for the first five wells shall be in the amount of \$150,000.~~

~~(b) A blanket financial assurance for the six to 10 wells shall be in the amount of \$300,000.~~

~~(c) A blanket financial assurance for the 11 to 25 wells shall be in the amount of \$500,000.~~

~~(d) A blanket financial assurance for more than 25 wells shall be in the amount of \$1,000,000.]~~

C. Active wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsection D of 19.15.8.9 NMAC in one of the following categories:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance in the following amounts covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC:

(a) \$50,000 for one to 10 wells;

(b) \$75,000 for 11 to 50 wells;

(c) \$125,000 for 51 to 100 wells; and

(d) \$250,000 for more than 100 wells.

D. Inactive wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance covering all wells of the operator subject to Subsection D of 19.15.8.9 NMAC:

(a) \$150,000 for one to five wells;

(b) \$300,000 for six to 10 wells;

(c) \$500,000 for 11 to 25 wells; and

(d) \$1,000,000 for more than 25 wells.

E. Operators who have on file with the division a blanket financial assurance that does not cover additional wells shall file additional single well bond financial assurance for any wells not covered by the existing blanket bond or, in the alternative, may file a replacement blanket bond.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, / /2018]

### 19.15.8.14 EFFECTIVE DATES.

A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.

B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.

C. The 2018 amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after (effective date of rule), and for all other wells on (effective date of rule)

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, / /2018]

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**19.15.8.9 [FINANCIAL ASSURANCE FOR WELL PLUGGING] CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:**

A. A person who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately-owned or state-owned lands within this state shall furnish a financial assurance acceptable to the division in the form of an irrevocable letter of credit, plugging insurance policy, or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with division rules.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. The division accepts the following categories of financial assurance for wells that are not required to provide financial assurance under Subsection D of 19.15.8.9 NMAC:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well. The depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance in the following amounts covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond:

(a) \$50,000 for one to 10 wells;

(b) \$75,000 for 11 to 50 wells;

**19.15.8.9 [FINANCIAL ASSURANCE FOR WELL PLUGGING] CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:**

A. ~~A person~~ An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well ~~on privately-owned or state-owned lands~~ within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy, or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission division rules, unless the well is covered by federally required financial assurance.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. Active wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and that are not subject to Subsection D of 19.15.8.9 NMAC in one of the following categories: The division accepts the following categories of financial assurance for wells that are not required to provide financial assurance under Subsection D of 19.15.8.9 NMAC:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well. The depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance in the following amounts covering all wells of the operator subject to Subsection C of 19.15.8.9 NMAC ~~oil, gas or service~~

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(c) \$125,000 for 51 to 100 wells; and

(d) \$250,000 for more than 100 wells.

(3) In determining the amount of the blanket plugging financial assurance, if an operator can demonstrate that it has federal wells that move operator into a higher tier under Paragraph (2) of Subsection C of 19.15.8.9 NMAC, the division shall reduce the amount of the operator's blanket plugging financial assurance by the amount of the federal statewide blanket bond, provided that the amount of the blanket plugging financial assurance cannot be less than the amount required for the total number of the operator's state and private wells.

D. An operator shall provide financial assurance with one of the following categories for a well that has been in temporarily abandoned status for more than two years or for a well that the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well. The depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance for temporarily abandoned status wells in the following amounts covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond:

(a) \$150,000 for one to five wells;

wells drilled, acquired or operated in this state by the principal on the bond:

(a) \$50,000 for one to 10 wells;

(b) \$75,000 for 11 to 50 wells;

(c) \$125,000 for 51 to 100 wells; and

(d) \$250,000 for more than 100 wells.

(3) In determining the amount of the blanket plugging financial assurance, if an operator can demonstrate that it has federal wells that move operator into a higher tier under Paragraph (2) of Subsection C of 19.15.8.9 NMAC, the division shall reduce the amount of the operator's blanket plugging financial assurance by the amount of the federal statewide blanket bond, provided that the amount of the blanket plugging financial assurance cannot be less than the amount required for the total number of the operator's state and private wells.

D. Inactive wells. An operator shall provide financial assurance with one of the following categories for a wells that are covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which a well that the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well. The depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance covering all wells of the operator subject to Subsection D of 19.15.8.9 NMAC for temporarily abandoned status wells in the following amounts covering all oil, gas or



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<u>(b) \$300,000 for six to 10 wells;</u>	<u>service wells drilled, acquired or operated in this state by the principal on the bond:</u>
<u>(c) \$500,000 for 11 to 25 wells; and</u>	<u>(a) \$150,000 for one to five wells;</u>
<u>(d) \$1,000,000 for more than 25 wells.</u>	<u>(b) \$300,000 for six to 10 wells;</u>
	<u>(c) \$500,000 for 11 to 25 wells; and</u>
	<u>(d) \$1,000,000 for more than 25 wells.</u>

STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION



In the Matter of Proposed Amendments to the  
Commission's Rule for Permitting of Wells for  
Underground Injection by Amending Certain  
Sections of Rule 19.15.26 NMAC; Statewide

CASE No. 16078

CERTIFICATE OF COMPLIANCE WITH NOTICE REQUIREMENTS

As Clerk to the New Mexico Oil Conservation Commission, I hereby certify that notice of this matter has been provided as follows:

1. The Notice of Proposed Rulemaking for this Case ("Notice") was e-mailed to the State Records Center and Archives and was published in the New Mexico Register on September 24, 2018. (Attachment A)
2. A copy of the Notice was sent to the Albuquerque Journal and was published on October 3, 2018. (~~Attachment B~~) *FD*
3. On October 9, 2018, a copy of the Notice was posted on the Oil Conservation Division website and remained posted through the date of the public hearing.
4. On October 10, 2018, a copy of the Notice was sent to the Oil Conservation Division field offices in Hobbs, Artesia and Aztec to be available to the public.
5. By October 10, 2018, a copy of the Notice had been mailed or e-mailed to all persons on the Commission mailing list for rulemakings.
6. On October 10, 2018, a copy of the Notice was mailed to the New Mexico Legislative Council for distribution to committees.
7. On September 24, 2018, a copy of the Notice was mailed to the New Mexico Department of Information Technology for posting on the sunshine portal.

NEW MEXICO OIL CONSERVATION COMMISSION

*Florence Davidson*

Florence Davidson, Commission Clerk



#### NOTICE OF LIMITED REHEARING IN RULEMAKING

The State of New Mexico through its Oil Conservation Commission (Commission) hereby gives notice of the limited rehearing to be held in the following rulemaking:

**Case No. 16078: IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION'S RULES ON FINANCIAL ASSURANCE AND PLUGGING AND ABANDONMENT OF WELLS, 19.15.2, 19.15.8, AND 19.15.25 NMAC**

**Rehearing.** The Commission will commence the public rehearing on the portion of the proposed rule amendments covering financial assurance in 19.15.8 NMAC, and, in particular, the applicability of 19.15.8 NMAC to wells that are covered by federally required financial assurance, at the Commission meeting at 9:00 A.M. on November 15, 2018, in Porter Hall, 1st Floor, Wordell Chino Bldg., 1220 South St. Francis Drive, Santa Fe, New Mexico.

**Proposed Rule Amendments.** The Oil Conservation Division (OCD) proposes to amend 19.15.2, 19.15.8, and 19.15.25 NMAC to make changes concerning financial assurance and plugging and abandonment of wells and related matters. The proposed rule changes include: (a) amending 19.15.2.7 NMAC to add definitions of terms used in financial assurance provisions; (b) amending 19.15.8.9 NMAC to provide for the increase in blanket bond amounts authorized by the Legislature and to change the amount of single well bonds to conform to statutory requirements; and (c) amending 19.15.25 NMAC to coordinate approved temporary abandonment with financial assurance requirements and to limit the use of approved temporary abandonment.

On July 19 and 20, 2018, the Commission held a hearing on the OCD's application to amend 19.15.2.7, 19.15.8, and 19.15.25 NMAC and on August 20, 2018 issued Order R-14834 to adopt certain changes to those rules. On September 13, 2018, the Commission granted a limited rehearing to review the scope of the financial assurance requirements of 19.15.8 NMAC, and, in particular, the applicability of 19.15.8 NMAC to wells which are covered by federal financial assurance.

**Purpose of Proposed Rule Amendments.** The proposed changes will further the goals of the Oil and Gas Act by providing financial assurance that more accurately reflects the actual cost of well plugging, by implementing changes promulgated by the 2018 Legislature, and by limiting the overuse of approved temporary abandonment.

**Legal Authority.** The proposed rule amendments and rehearing are authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically Section 70-2-11 (which authorizes the adoption of rules to carry out the purposes of the Act and to prevent waste), Section 70-2-12(B)(1) (which authorizes the adoption of rules on plugging and financial assurance), and Section 70-2-14 (which requires the agency to establish categories of financial assurance). The rulemaking proceeding, including the rehearing, is governed by the Commission's rule on rulemaking, 19.15.3 NMAC.

**Written or electronic comments on the portions of the proposed rule amendments for which the Commission granted the rehearing may be hand delivered or mailed to the Commission Clerk, Florene Davidson, 3rd floor, 1220 South St. Francis Drive, Santa Fe, NM 87505, or e-mailed to [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). Written or electronic comments shall be limited to the scope of the rehearing. All written or electronic comment must be received by the Commission Clerk no later than 9:00 A.M. on November 15, 2018, unless the Commission or the Commission Chair extends this deadline.**

**Persons intending to submit proposed modifications to the proposed rule amendments to 19.15.8 NMAC that are the subject of the rehearing, present technical testimony at the rehearing, or cross-examine witnesses must file six copies of a Pre-hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 P.M. on November 1, 2018. Pre-hearing Statements must be hand delivered, mailed, or e-mailed to the Commission Clerk at the above address.**

**Any person who has not submitted a pre-hearing statement may present non-technical testimony or make an unsworn statement at the rehearing. Non-technical testimony or unsworn statements shall be limited to the scope of the rehearing. A person may also offer exhibits with the testimony so long as the exhibits are relevant to the scope of the rehearing and do not unduly repeat the testimony. Any person who wishes to present non-technical testimony should indicate his or her intent on a sign-in sheet at the hearing. A person who testifies at the rehearing is subject to cross-examination by the commissioners, commission counsel, or a party on the subject matter of the person's direct testimony.**

The full text of the proposed rule amendments is available

\*Please note this confirmation is to be considered a quote and may be subject to change.

**Attachment  
A**

THE FULL TEXT OF THE PROPOSED RULE AMENDMENTS IS AVAILABLE from Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Rules page at the Oil Conservation Division's website at <http://www.emnrd.state.nm.us/oecd>, or at Oil Conservation Division offices in Santa Fe, Hobbs, Artesia, or Aztec. Information on the summary and purpose of the proposed rule, the legal authority for the proposed rule, and the order granting the rehearing is also available at the Rules page.

Technical Information that served as a basis for the proposed rule amendments includes:

OCD Well Plugging Costs FY2014-FY2018 (spreadsheet)

Those materials can be viewed on the Rules page.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 by November 1, 2018. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans to use projection equipment at a hearing must contact Ms. Davidson seven business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the person requesting to use the wireless connection must provide a laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 26th day of September, 2018.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

Heather Riley  
Chair, Oil Conservation Commission

Journal: October 3, 2018

### § 3104.1

the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

[53 FR 17354, May 16, 1988. Redesignated at 61 FR 4750, Feb. 8, 1996]

## Subpart 3104—Bonds

### § 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely af-

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ected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected

## Bureau of Land Management, Interior

## § 3104.5

by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

[53 FR 22838, June 17, 1988]

### § 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than \$10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

[53 FR 22839, June 17, 1988]

### § 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than \$25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating

rights (sublessees), or operators may furnish a bond in an amount of not less than \$150,000 covering all leases and operations nationwide.

[53 FR 22839, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

### § 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

[53 FR 22839, June 17, 1988]

### § 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The

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increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

[53 FR 22839, June 17, 1988]

#### **§3104.6 Where filed and number of copies.**

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See §1821.2-1).

[53 FR 17354, May 16, 1988]

#### **§3104.7 Default.**

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger

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amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of §3108.3 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17354, May 16, 1988]

#### **§3104.8 Termination of period of liability.**

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 lease have been met.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17355, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

### **Subpart 3105—Cooperative Conservation Provisions**

#### **§3105.1 Cooperative or unit agreement.**

The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

#### **§3105.2 Communitization or drilling agreements.**

##### **§3105.2-1 Where filed.**

(a) Requests to communitize separate tracts shall be filed, in triplicate, with the proper BLM office.

(b) Where a duly executed agreement is submitted for final Departmental approval, a minimum of 3 signed counterparts shall be submitted. If State lands are involved, 1 additional counterpart shall be submitted.

##### **§3105.2-2 Purpose.**

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by