

## **BOND PROCESSING DIRECTIONS**

### **General:**

For patents issued subject to the provisions of the Stock-Raising Homestead Act (SRHA) of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), mineral entrymen may need to file a bond with the Bureau of Land Management in order to mine and remove the deposits underlying the private surface. Onshore Oil and Gas Order No. 1, extends these provisions to all split estate situations. For oil and gas lessees and operators, such activities include those necessary or incidental to carry out exploration, development or production. A bond is required when the mineral entryman is unable to secure a written consent or waiver or enter into an agreement to pay compensatory damages. The right of the mineral entryman to enter, reenter and occupy as much of the surface as is required for activities reasonably incidental to extraction and removal of the mineral deposits is a specific provision of Sec. 9 of the SRHA. Because the mineral estate is considered the dominant estate, any other type of patent which reserves any portion of the mineral estate to the United States is deemed to include this right of entry. The SRHA also provides that the mineral entryman shall not injure, damage, or destroy permanent improvements of the homestead entryman or land owner and shall be liable to and shall compensate the homestead entryman or land owner for all damages to the crops on the land. (See 43 U.S.C. 299(a) as implemented by 43 CFR 3814(c)). The BLM encourages its lessees to communicate and cooperate with the landowner to obtain their consent to the development and extraction of federal minerals. When those efforts fail, a bond will be required.

### **When is a 3814 bond required?**

A 3814 bond shall be required whenever a lessee/operator files an Application for Permit to Drill (APD) and the lessee/operator fails to include a copy of consent or waiver signed by the entryman/land owner; or when the lessee/ operator fails to include certification of an agreement to pay compensatory damages properly executed by both the lessee/operator and the entryman/land owner.

An increase to a 3814 bond shall be required whenever a lessee/operator files a Sundry Notice (SN), if the SN expands the area of private surface disturbance and the loss to crops or permanent improvements increases.

### **Can the 3814 bonding requirement be met by increasing the lessee/operator=s oil and gas lease bond?**

No. Departmental regulations at 43 CFR 3814.1(c) state that, in lieu of a consent/waiver or agreement, a bond on Form 3814 of no less than \$1,000 shall be required. The Secretary of the Interior (and any of his or her designees) is without authority to disregard his or her own duly promulgated regulations on the SRHA.

### **Can the 3104 bonding requirement be met by a 3814 bond?**

No. Departmental regulations at 43 CFR 3104.1(a) state that prior to any surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator, shall submit an individual, statewide or nationwide bond of no less than the minimum amount for such bond to assure BLM that all lease obligations will be performed. The 3814 bond does not cover plugging and abandonment, reclamation or compliance with lease terms.

### **What form must be used to file a 3814 bond?**

A Form 3814 Mineral Claimants Bond shall be used for all bonds submitted under 43 CFR 3814.1.

### **What is the amount of a 3814 bond?**

A 3814 bond shall not be less than \$1,000. This is the minimum, not the maximum amount of the bond. The amount shall be sufficient to indemnify the entryman or landowner for projected loss of crops and damage to tangible improvements and will be determined by the field office manager only if the surface owner objects to the bond amount. The authorized officer shall take into account the projected area of disturbance, the probable life of the well or wells needed to develop the oil and gas, and an average annual inflation rate of 5 percent.

### **Where is a 3814 bond filed?**

A 3814 bond must be filed in the proper State Office. It shall be entered into the Automated Bond and Surety System within 5 days of receipt and maintained of record in the appropriate lease casefile. The State Office fluid minerals bond coordinator will promptly notify the appropriate field office of the filing, whether the bond is acceptable on its face and that any additional information required by the regulations has also been filed. The authorized officer must verify the bond amount as sufficient in case of protest. The acceptance decision cannot be written before the end of the 30-day protest period. The protest period begins when the entryman/land owner receives a copy of the bond. A copy of the acceptance decision will be sent to the lessee/operator, the landowner (by certified mail) and to the field office (by electronic mail).

A copy of the bond must be served on the entryman/land owner by the lessee/operator. A copy of the certified mail card showing receipt and any accompanying letter or material must be sent to the field office authorized officer. The APD or Sundry Notice is not complete until the authorized officer receives this copy, all else being regular.

### **What kind of surety is acceptable for a 3814 bond?**

Under the regulations at 43 CFR 3814.1(c), two competent sureties (individuals) or a bonding company are the only acceptable sureties for a 3814 bond.

### **What does Acompetent surety@ mean?**

A competent surety is one that is financially capable of paying the face amount of the bond. Regulations at 43 CFR 3814.1(c) require that, if individual sureties are used to secure the bond, the following also be filed at the same time with authorized officer B

- (1) Affidavits of justification by the sureties;
- (2) A certificate by a judge or clerk of the court of record, a U.S. district attorney, a U.S. commissioner, or a U.S. postmaster as to the identity, signatures, and financial competency of the sureties;
- (3) Evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

The above-referenced materials shall be filed with the bond in the proper State Office. The State Office fluid minerals bond coordinator will send a copy of item No. 3 to the field office to document the well file.

If a corporate surety is used to secure the bond, it must be qualified to underwrite Government bonds. Qualified corporate sureties are listed on Department of the Treasury=s Circular 570. The circular is available online at B

<http://fms.treas.gov/c570/c570.html>

The circular is also published in the Federal Register on or about each July 1. Updates are also available online or through the Federal Register. You can sign up for automatic notification at the above-listed website.

### **What if the homestead entryman/landowner does not agree with the bond amount?**

The entryman or landowner has 30 days from the date he or she receives a copy of the bond within which to object (protest) to the authorized officer. The bond will not be approved or accepted before the end of this period.

If a timely objection (protest) is received, the authorized officer will immediately evaluate it. If the authorized officer determines that the bond amount is not sufficient, a certified notice will be sent to the mineral entryman disapproving the bond, stating an acceptable amount, and stating the appeal rights of the mineral entryman.

If the authorized officer determines that the bond as filed is sufficient, the State Office fluid minerals bond coordinator will send a certified notice disallowing the objection (protest) to the homestead entryman or landowner and stating his or her appeal rights. The bond will be accepted concurrently. An electronic copy of this decision will be sent to the field office authorized officer to document the well file. The APD or SN shall also be approved concurrently, all else being regular.

**What if the homestead entryman/landowner appeals the decision to disallow his or her objection?**

The appeal must be filed in the proper State Office as that is the office that wrote the decision. The State Office fluid minerals bond coordinator will notify the field office authorized officer who will forward to the bond coordinator the originals of all appropriate materials. Appropriate materials include everything used to determine the bond amount, and all correspondence had with the lessee/operator or entryman/landowner about the bond.

The filing of an appeal does not stay approval of the APD or SN. Operations may continue during the pendency of the appeal.

**What data entry must be made for a 3814 bond?**

Data entry in the Automated Bond & Surety System will be sent by separate IM.

**When will the 3814 bond be released?**

The 3814 bond will be released after compensation of damages to crops and tangible improvements to the surface owner has occurred if any damages actually resulted from the lessee or operator's actions and the lessee or operator requests release of the bond. BLM will make a reasonable effort to contact the surface owner and confirm that compensation has been received prior to release of the bond.