

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 43: Public Lands: Interior

[PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT](#)

[Subpart 2805—Terms and Conditions of Grants](#)

§2805.20 Bonding requirements.

If you hold a grant or lease under this part, you must comply with the following bonding requirements:

(a) The BLM may require that you obtain, or certify that you have obtained, a performance and reclamation bond or other acceptable bond instrument to cover any losses, damages, or injury to human health, the environment, or property in connection with your use and occupancy of the right-of-way, including costs associated with terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. The BLM will periodically review your bond for adequacy and may require a new bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or lease.

(1) The BLM must be listed as an additionally named insured on the bond instrument if a State regulatory authority requires a bond to cover some portion of environmental liabilities, such as hazardous material damages or releases, reclamation, or other requirements for the project. The bond must:

(i) Be redeemable by the BLM;

(ii) Be held or approved by a State agency for the same reclamation requirements as specified by our right-of-way authorization; and

(iii) Provide the same or greater financial guarantee that we require for the portion of environmental liabilities covered by the State's bond.

(2) *Bond acceptance.* The BLM authorized officer must review and approve all bonds, including any State bonds, prior to acceptance, and at the time of any right-of-way assignment, amendment, or renewal.

(3) *Bond amount.* Unless you hold a solar or wind energy lease under subpart 2809, the bond amount will be determined based on the preparation of a RCE, which the BLM may require you to prepare and submit. The estimate must include our cost to administer a reclamation contract and will be reviewed periodically for adequacy. The BLM may also consider other factors, such as salvage value, when determining the bond amount.

(4) You must post a bond on or before the deadline that we give you.

(5) Bond components that must be addressed when determining the RCE amount include, but are not limited to:

(i) Environmental liabilities such as use of hazardous materials waste and hazardous substances, herbicide use, the use of petroleum-based fluids, and dust control or soil stabilization materials;

(ii) The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and

(iii) Interim and final reclamation, re-vegetation, recontouring, and soil stabilization. This component must address the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

(6) You may ask us to accept a replacement performance and reclamation bond at any time after the approval of the initial bond. We will review the replacement bond for adequacy. A surety company is not released from obligations that accrued while the surety bond was in effect unless the replacement bond covers those obligations to our satisfaction.

(7) You must notify us that reclamation has occurred and you may request that the BLM reevaluate your bond. If we determine that you have completed reclamation, we may release all or part of your bond.

(8) If you hold a grant, you are still liable under §2807.12 if:

(i) We release all or part of your bond;

(ii) The bond amount does not cover the cost of reclamation; or

(iii) There is no bond in place;

(b) If you hold a grant for solar energy development outside of designated leasing areas, you must provide a performance and reclamation bond (see paragraph (a) of this section) prior to the BLM issuing a Notice to Proceed (see §2805.12(c)(1)). We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and it must be no less than \$10,000 per acre that will be disturbed;

(c) If you hold a grant for wind energy development outside of designated leasing areas, you must provide a performance and reclamation bond (see paragraph (a) of this section) prior to the BLM issuing a Notice to Proceed (see §2805.12(c)(1)). We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and it must be no less than \$10,000 per authorized turbine less than 1 MW in nameplate capacity or \$20,000 per authorized turbine equal to or greater than 1 MW in nameplate capacity; and

(d) For short-term right-of-way grants for energy site or project-area testing, the bond amount must be no less than \$2,000 per authorized meteorological tower or instrumentation facility location and must be provided before the written approval to proceed with ground disturbing activities (see §2805.12(c)(1)).

[81 FR 92215, Dec. 19, 2016]

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