

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-13. Performance Bonds.

R649-13-1. Performance Bonds Required for Oil and Gas Activities.

(1) Before engaging in any permitted oil and gas activity in the state of Utah, an operator shall provide a performance bond to the division as set forth in Rule R649-13.

(a) Oil and gas activities include:

- (i) Drilling, completion or recompletion of an oil or gas well;
- (ii) Production of oil or gas;
- (iii) Re-entering an abandoned well;
- (iv) Activities commenced by a transferee upon a transfer of ownership of existing wells;
- (v) Underground injection control (UIC) disposal and enhanced oil recovery (EOR) Operations;
- (vi) Operation of E&P Product Recycling Facilities; and
- (vii) Seismic Exploration.

(b) Except as set forth in Subsection R649-13-1(c), the division will not require a separate bond when an operator furnishes evidence to the division that a bond to cover plugging and restoration and in a form and amount acceptable to the division is held by other governmental or tribal entities in accordance with state, federal or tribal regulatory requirements and has been approved by the agency having jurisdictional primacy over oil and gas operations for each permitted oil and gas activity.

(c) If a federally permitted well with private or state surface does not penetrate the targeted federal or Tribal minerals and the federal bonding agency releases or excludes the well from their bonding, the well will be regulated by the division and bonded according to Sections R649-13-2 or R649-13-3.

(d) Except as set forth in Section R649-13-6, performance bonds shall remain in full force and effect until liability thereunder is released by the division.

(e) Should the division determine that an operator is not appropriately bonded, the division shall provide written notice to the operator of the bonding deficiencies. Except as provided in Subsection R649-13-6(b), if the operator fails to obtain appropriate bonding within 120 days, the division may require an operator to immediately cease all oil and gas activities until the operator complies with the bonding requirements.

(f) A performance bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, maintain and restore the well site and complete reclamation of other permitted oil and gas activity.

(g) The form and amount of the performance bond must be approved by the division. Subject to the requirements of Subsection (2), acceptable forms may include a surety bond, a collateral bond, cash, certificates of deposit, letters of credit or a combination of these bonding methods.

(h) Performance bond liability shall be for the duration of the drilling, operating, plugging, restoration of the well and well site, and reclamation of other permitted oil and gas activity.

(i) To ensure continuous coverage, a performance bond shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing a bond, if necessary, at least 30 days before the expiration date with another acceptable bond.

(2) General Terms & Conditions of Performance Bonds

(a) Each performance bond shall provide a mechanism for the surety, or other guarantor of the performance bond, to provide prompt notice to the division and the operator of any action filed alleging the insolvency or bankruptcy of the surety or guarantor, or alleging violations that would result in suspension or revocation of the surety's or guarantor's charter or license to do business.

(i) Upon the incapacity of the surety or guarantor to guarantee payment of the performance bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

(ii) Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing of the lack of bond coverage and shall specify a reasonable period, not to exceed 90 days, to provide substitute bond coverage. The 90-day period may be extended upon written request and a showing of good cause to the division or the board.

(b) Surety Bonds.

(i) A surety bond shall be executed by the operator and a surety company licensed to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better. All surety companies will also be listed in the current issue of the U.S. Department of the Treasury Circular 570.

(ii) When the division notifies an operator that a surety company guaranteeing its performance does not meet the standard of Subsection (2)(b)(i), the operator shall have 120 days after notice from the division to obtain bond coverage which complies with this rule.

(iii) A surety bond will be forfeited and collected by the division if not replaced by an acceptable bond at least 30 days before its expiration date.

(c) Collateral Bonds.

(i) The division shall not accept an individual cash account or certificate of deposit in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation;

(ii) The division shall require that certificates of deposit be made payable to or assigned to the division both in writing and upon the records of the bank issuing the certificates. If assigned to the division, the division shall require the bank issuing the certificate to waive all rights of setoff or liens against that certificate.

(iii) Any interest paid on a cash account or certificate of deposit shall be retained in the account and applied to the bond value of the account unless the division has provided written approval for the payment of interest to the operator.

(iv) Letters of credit will be subject to the following conditions:

(A) Letters of credit shall be payable to the division upon demand.

(B) Letters of credit shall be irrevocable during their terms.

(C) Letters of credit shall be issued by a federally insured bank authorized to do business in the United States.

(D) A letter of credit will be forfeited and collected by the division if not replaced by an acceptable bond at least 30 days before its expiration date.

(v) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time the collateral is offered.

(d) Transfer of wells.

(i) If the transfer, sale, or exchange of wells between parties results in a change in well performance bond amounts the division may allow the parties to agree to maintain the bonding amount prior to the transfer, sale, or exchange for a period of up to 12 months in order to facilitate operational changes. An extension may be requested before the board.

(3) Bonding Schedules

(a) The board shall adjust the bonding schedules outlined in Section R649-13-4 on a not to exceed five-year cycle to account for inflation based on current data from the Producer Price Index for oil and gas extraction operations. The adjusted schedules shall follow Rulemaking Procedure pursuant to Section 63G-3-301.

(b) Then, upon written notice and a showing of good cause, may require operators to provide performance bonds in amounts greater than set out in these rules. Good cause includes violation of Section R649-3-36, Shut-in and Temporarily Abandoned Wells, a violation of which shall result in the division requiring a bond amount for the applicable well in the amount of actual plugging and site restoration costs.

(c) An operator may appeal a performance bond determination by the division by filing a request for agency action with the division pursuant to Rule R649-10.

R649-13-2. Individual Well Depth Performance Bonds

(1) Except as set forth in Subsection R649-13-3, an operator who, on or after [effective date], engages in the drilling, completion, re-entry, deepening, or who acquires a well, shall furnish to the division an individual well depth performance bond in the amount set forth in the approved individual well depth performance bonding schedule.

(2) The individual well depth performance bond amount may be found in Subsection R649-13-4(4).

(3) The division shall provide written notification to each operator of the need to establish or adjust an individual well depth performance bond to conform with an updated bonding schedule or bonding requirement. Within 120 days of such notification by the division the operator shall post the required individual well bond with the division. In the event of a transfer of ownership for the well where there is an approved bond in place the operator shall provide an updated bond amount within 12 months of a transfer of ownership for the well as provided in Subsection R649-13-6(b).

R649-13-3 Blanket Well Performance Bonds

(1) Blanket Well Performance Bonds

An operator who, on or after [effective date], engages in the drilling, completion, re-entry, deepening of a well, or who acquires an existing well, and who meets the qualifications set forth in Subsection (1)(a), may file with the division a blanket well performance bond to cover operations of its State Wells in lieu of an individual well depth performance bond for each well as required by Section R649-13-2.

(a) Qualifications Required for Blanket Well Performance Bonding

(i) To qualify for a blanket well performance bond, an operator must meet: (1) a production requirement, and (2) a threshold at risk well ratio requirement.

(ii) An operator qualifies for blanket well performance bonding in accordance with the tier 1 base blanket bond schedule if:

(A) The operator's total well count production is equal to or greater than 1000 BOE for the previously reportable 12 months, and

(B) The operator's at risk well ratio is equal to or less than 20%.

(iv) An operator qualifies for blanket well performance bonding in accordance with the tier 2 base blanket bond schedule if:

(A) The operator's total well count production is equal to or greater than 500 BOE for the previously reportable 12 months, and

(B) The operator's at risk well ratio is equal to or less than 22%.

(v) An operator qualifies for blanket well performance bonding in accordance with the tier 3 base blanket bond schedule if:

(A) The operator's total well count production is equal to or greater than 200 BOE for the previously reportable 12 months, and

(B) The operator's at risk well ratio is equal to or less than 25%.

(iii) An operator who does not qualify for blanket well performance bonding must provide individual well depth performance bonds for each well as outlined in Section R649-13-2.

(b) Determination of Blanket Well Performance Bond Amount

(i) An operator who qualifies for blanket well performance bonding shall post a bond with the division that equals the total sum of the operator's combined base blanket bond amount and at risk well supplemental amount within the appropriate tier.

(A) Base Blanket Bond Amount Calculation.

(I) An operator's base blanket bond amount is determined in accordance with the base blanket bond table for the appropriate tier outlined in Section R649-13-4.

(II) An operator's base blanket bond amount shall be the amount which corresponds to the operator's total state well count.

(ii) For each tier, the allowable percentage of at risk wells exempt from inclusion in the calculation is as follows:

(A) Tier 1: 20%;

(B) Tier 2: 13%; and

(C) Tier 3: 8%.

(B) At Risk Well Supplement Amount Calculation.

(I) An operator's at risk well supplement amount shall be determined for at risk wells over and above the following percentages and is in accordance with the at risk well supplement table for the appropriate tier outlined in Section R649-13-4:

(A) Tier 1: 20%;

(B) Tier 2: 13%; and

(C) Tier 3: 8%.

(II) The depth to be used for this calculation shall be the average TVD.

(III) An operator's at risk well supplement amount shall be calculated by:

(1) determining the total number of non-exempt at risk wells, rounded down to the nearest multiple ten;

(2) determine the average TVD;

(3) identifying the corresponding bond amount for the average TVD for the appropriate tier; and

(4) multiplying the multiple of ten from Subsection (b)(i)(B)(III)(1) by the corresponding bond amount.

(2) Adjustment of Blanket Well Performance Bond Amount

(a) An operator's blanket well performance bond amount shall be set in accordance with the base blanket bond schedules found in Section R649-13-4, which shall be adjusted every five years as referenced in Subsection R649-13-1(3).

(b) An operator's at risk well supplement will be recalculated under Subsection (2)(b)(i)(B)(III)(1) whenever an operator's at risk wells increase to the next multiple of ten.

(c) An operator may request a recalculation of its at risk well supplement whenever an operator's at risk wells decrease by a multiple of ten.

(d) An operator's blanket well performance bond amount shall be recalculated if the division determines the operator's blanket well performance bonding qualifications have changed since the last calculation.

(e) The division shall provide written notification to an operator of the need to increase the amount of its blanket well performance bond to conform with updated bonding schedules or an increase in state at risk wells.

(f) Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with Rule R649-13 or appeal the decision to the Board of Oil, Gas, and Mining.

R649-13-4 Bonding Schedules.

(1)(a) Tier 1 Requirements:

(i) The operator's total state well production is required to be equal to or greater than 1000 BOE per day average for the previously reportable 12 months; and

(ii) An at risk well ratio equal to or less than 20%.

(b)(i) Tier 1 base blanket bond table for total well count

TABLE BASE BLANKET BOND	
STATE WELL COUNT	AMOUNT OF BOND
1-10	\$ 200,000
11-25	\$ 300,000
26-50	\$ 400,000
51- 100	\$ 500,000
101-250	\$ 650,000
251-500	\$ 800,000
501-750	\$ 1,000,000
751-1000	\$ 1,250,000
1001-1500	\$ 1,500,000
1501-2000	\$ 2,000,000
2001-2500	\$ 2,500,000

(ii) Tier 1 at risk well supplemental schedule for state at risk wells based on average TVD

TABLE AT RISK WELL SUPPLEMENT SCHEDULE	
AVERAGE TVD	AMOUNT OF BOND PER AT RISK WELL
0 - 500 FEET	\$ 2,500
501 - 1,000 FEET	\$ 5,000
1,001 - 3,000 FEET	\$ 10,000
3,001 - 6,000 FEET	\$ 20,000
6,001 - 9,000 FEET	\$ 32,500
9,001 - 12,000 FEET	\$ 42,500
12,000+ FEET	\$ 55,000

(2)(a) Tier 2 Requirements:

- (i) The operator's total state well production is required to be equal to or greater than 500 BOE per day average for the previously reportable 12 months; and
- (ii) An at risk well ratio equal to or less than 22%.

(b)(i) Tier 2 base blanket bond table for total well count

TABLE BASE BLANKET BOND	
STATE WELL COUNT	AMOUNT OF BOND
1-10	\$ 300,000
11-25	\$ 450,000
26-50	\$ 600,000
51- 100	\$ 750,000
101-250	\$ 975,000
251-500	\$ 1,200,000
501-750	\$ 1,500,000
751-1000	\$ 1,875,000
1001-1500	\$ 2,250,000
1501-2000	\$ 3,000,000
2001-2500	\$ 3,750,000

(ii) Tier 2 at risk well supplemental schedule for state at risk wells based on average TVD

TABLE AT RISK WELL SUPPLEMENT SCHEDULE	
AVERAGE TVD	AMOUNT OF BOND PER AT RISK WELL
0 - 500 FEET	\$ 2,500
501 - 1,000 FEET	\$ 5,000
1,001 - 3,000 FEET	\$ 10,000
3,001 - 6,000 FEET	\$ 20,000
6,001 - 9,000 FEET	\$ 32,500
9,001 - 12,000 FEET	\$ 42,500
12,000+	\$ 55,000

(3)(a) Tier 3 Requirements:

- (i) The operator's total state well production is required to be equal to or greater than 200 BOE per day average for the previously reportable 12 months; and
- (ii) An at risk well ratio equal to or less than 25%; or
- (iii) Production greater than 1000 BOE per day for the previously reportable 12 months with no required at risk well ratio.

(b)(i) Tier 3 base blanket bond table for total well count

TABLE BASE BLANKET BOND	
STATE WELL COUNT	AMOUNT OF BOND
1-10	\$ 400,000

11-25	\$ 600,000
26-50	\$ 800,000
51- 100	\$ 1,000,000
101-250	\$ 1,300,000
251-500	\$ 1,600,000
501-750	\$ 2,000,000
751-1000	\$ 2,500,000
1001-1500	\$ 3,000,000
1501-2000	\$ 4,000,000
2001-2500	\$ 5,000,000

(ii) Tier 3 at risk well supplemental schedule for state at risk wells based on average TVD

TABLE AT RISK WELL SUPPLEMENT SCHEDULE	
AVERAGE TVD	AMOUNT OF BOND PER AT RISK WELL
0 - 500 FEET	\$ 2,500
501 - 1,000 FEET	\$ 5,000
1,001 - 3,000 FEET	\$ 10,000
3,001 - 6,000 FEET	\$ 20,000
6,001 - 9,000 FEET	\$ 32,500
9,001 - 12,000 FEET	\$ 42,500
12,000+	\$ 55,000

(4) Individual Well Depth Performance Bond, which is based on TVD

TABLE INDIVIDUAL WELL DEPTH PERFORMANCE BOND	
TVD	AMOUNT OF BOND PER WELL
0 - 500 FEET	\$ 5,000
501 - 1,000 FEET	\$ 10,000
1,001 - 3,000 FEET	\$ 20,000
3,001 - 6,000 FEET	\$ 40,000
6,001 - 9,000 FEET	\$ 65,000
9,001 - 12,000 FEET	\$ 85,000
12,000+	\$ 110,000

R649-13-5. Miscellaneous Bonds.

(1) Exploration and Production Recycling Facilities shall be bonded as set forth in Section R649-9-9.

(2) Waste Crude Oil Treatment Facilities shall be bonded as set forth in Section R649-9-9.

(3) Seismic Exploration operations shall be bonded as set forth in Section R649-3-26.

(4) Surface bonding shall be required as set forth in Section R649-3-38.

R649-13-6 Replacement of Performance Bonds.

(1) The division may allow an operator to replace existing performance bonds with other performance bonds that provide sufficient coverage.

(2) The division shall not release an existing performance bond until the operator has furnished, and the division has approved, an acceptable replacement performance bond.

(3) Replacement of a performance bond pursuant to this Subsection shall not constitute a release of bond under Section R649-13-7.

(4) Bond Replacement Due to Change of Operator.

(a) No later than 30 days after receipt of a complete Form 16 Operator Change Form, pursuant to Section R649-8-18, the division will provide the current and proposed operator with a determination of the proposed operator's performance bond requirements.

(b) In the event the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the well or wells assigned, the division will provide a written explanation justifying the bond adjustment. After receipt and approval of a plan to remedy the bond inadequacy the division may grant the new operator up to 12 months to remedy the bond inadequacy.

(c) The current operator's bond shall not be released until the proposed operator provides adequate replacement bonding.

(d) When the division has approved the termination of liability under a bond, the current operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change.

R649-13-7 Requirements for Performance Bond Release

(1) The owner or operator may request release of a bond by submitting a request for bond release together with a certification of the mailing of the same to interested parties having standing to challenge the same, including the surface landowner.

(a) Within 30 days of filing a request for bond release with the division, the operator shall submit signed affidavits from the surface landowner of the bonded site certifying that restoration has been performed as required by the surface agreements or to the satisfaction of the parties. These affidavits shall be used by the division in determination of final bond release as required by Subsection R649-3-34(13).

(i) If such affidavits are not submitted, the division shall conduct an inspection in accordance with Subsection (1)(b) upon receiving a written request from the operator.

(ii) The division shall give the operator and surface landowner notice of the date and time of the inspection. If either the operator or the surface landowner are unable to attend the inspection at the scheduled time and date, the division may reschedule the inspection to allow the operator or surface landowner to participate.

(b) Prior to the approval of a bond release, the division shall conduct an evaluation and inspection of the bonded site as follows:

(i) within 60 days of the filing of the request for bond release, or the conclusion of any associated informal adjudicative proceeding described in Subsection R649-13-6(2)(b), or as soon thereafter as weather conditions permit, the division shall conduct an inspection and evaluation of the bonded site to determine if restoration has been adequately performed.

(ii) The division's evaluation and inspection shall consider the adequacy of the bonded site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface

and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

(iv) The adequacy of a well site restoration will also evaluate any restoration requirements provided for in Section R649-3-34.

(v) The division shall retain a record of the evaluation and inspection according to the division's approved retention schedule.

(2)(a) If no written objection to the request for bond release is received by the division within 30 days after the filing of the request, the division may release liability under the bond as an administrative action, subject to the evaluation and inspection described in Subsection (1)(b).

(b) If a written objection to the request for bond release is received by the division within 30 days after the filing of the request, the request shall be set for an informal adjudicative proceeding and notice thereof given in accordance with the procedural rules of the division under Rule R649-10.

(i) within 60 days of the conclusion of any associated informal adjudicative proceeding, or as soon thereafter as weather conditions permit, whichever is the later, the division shall conduct an inspection and evaluation of the bonded site to determine if restoration has been adequately performed.

(3)(a) The division shall give written notice of its decision to release or not to release all or part of the performance bond within 30 days after the completion of the inspection and evaluation.

(b) The following parties will be notified of the division's decision:

(i) The operator;

(ii) The surety or other guarantor of the bond;

(iii) Other persons with an interest in bond collateral who have requested notification under Subsection R649-13-1(2)(c)(v);

(iv) The persons who filed written objections to the notice of application for bond release; and

(v) Any other interested parties identified in the certification of mailing in Subsection (1).

(c) If the decision is made to release the bond, the notification shall also state the effective date of the bond release.

(d) If the division denies the request for bond release or a portion thereof, the written notice shall state the reasons for denial and recommend corrective actions necessary to secure the release.

(4) Release of bond liability shall be conditioned upon compliance with Title 40, Chapter 6, Board and Division of Oil, Gas and Mining, Title R649, Natural Resources; Oil, Gas and Mining; Oil and Gas, and orders of the division and board.

(5) The denial of a request for bond release may be appealed by filing a request for agency action with the division pursuant to Rule R649-10.

R649-13-8 Forfeiture of Performance Bonds

(1) The division shall take action to forfeit a performance bond if any of the following occur:

(a) The operator refuses or is unable to conduct plugging and site restoration;

(b) The operator refuses or is unable to repair a well or remediate pollution;

(c) The operator fails to comply with conditions of a permit issued by the division; or

(d) The operator defaults on the conditions under which the bond was accepted.

(2) In the event the division forfeits a bond, the matter will be considered by the board prior to the division taking any action to plug a well.

(3) After proper notice and hearing, the board may order the division to do the following:

(a) Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies;

(b) Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work;

(c) Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration; or

(d) Take other actions the board deems reasonable and appropriate.

(4) In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator and its principals all costs of plugging and restoration in excess of the amount forfeited.

(e) In the event the amount forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

(f) In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, the operator must establish new bond coverage in accordance with these rules or, upon an order from the division or the Board, cease operations until adequate bonding is provided.

R649-13-9. Approval of Bonding Contingent Upon Compliance with laws

(1) Division approval of a bond is conditioned upon an operator's compliance with Title 40, Chapter 6, Board and Division of Oil, Gas and Mining, Title R649, Natural Resources; Oil, Gas and Mining; Oil and Gas, and orders of the division and board.

(2) Except as set forth in Subsection (3), the division shall not approve a bond where information available to the division indicates that an operator:

(a) has an existing liability with the division; or

(b) has an owner, officer, director, partner, member or manager of a limited liability company, or other person with a controlling interest in the entity, who has or previously had, a controlling interest in another entity with an existing liability with the division.

(3) The division may approve a bond for an operator with an existing liability if the operator provides proof that the existing liability has been resolved or is in the process of being resolved to the division's satisfaction.

(4) The denial of a bond by the division may be appealed by filing a request for agency action with the board pursuant to Rule R649-10.

R649-13-10. Effective Date of Rule Revisions

(1) The performance bond amounts for all wells, facilities, and operations permitted after [date we think this will go into effect] shall be determined as set forth in Sections R649-13-2 and R649-13-3 in accordance with the bond schedules referenced in Subsection R649-13-1(3)(a).

(2) Performance bonds for wells, facilities, and operations permitted before [date we think this will go into effect], will be adjusted to conform to the requirements of Sections R649-13-2 and R649-13-3 as follows:

(a) On or before [date will go into effect], the division shall complete a comprehensive well analysis for each operator and determine the total performance bond amount required by the bonding schedule.

(b) The division shall send written notification to each operator of the division's final bonding assessment.

(c) For wells with existing bonding as of [date we think this will go into effect], an operator will be allowed to increase their bonding to conform to the division's bonding assessment in five installments. The installments shall be made as follows:

(i) The first installment is due six months after the date the division notifies the operator of their bonding assessment, and must be a minimum of \$50,000, or one-fifth the difference between the operator's existing bonding and the division's bonding assessment, whichever is greater;

(ii) The second through fourth installments are due annually on [month and day of when we think this will go into effect] and must be a minimum of one-quarter of the difference between the operator's existing bonding after payment of the first installment and the division's bonding assessment.

(iii) The fifth and final installment is due on [month and day of when we think this will go into effect] of the year following the fourth installment and must be in the amount of the remaining difference between the operator's existing bonding and the division's bonding assessment.