

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Arizona State Office**

In Reply Refer to:
3715/3809 (AZ-932) P

June 22, 2001

EMS TRANSMISSION:

Instruction Memorandum No. AZ-2001-025
Expires: 9/30/2001

To: Field Managers

From: State Director

Subject: Bonding for Plans of Operations Pursuant to 43 CFR 3809 Revised

DD: 7/9/01

Purpose: This instruction Memorandum revises IM No. AZ-2001-020 which provided guidance on bonding for plans of operation under 43 CFR 3809.

Policy/Action: The BLM announced on Friday, June 15, 2001 that it is briefly extending the deadline for mining operators to meet, but fully intends to keep, the financial guarantee requirements (i.e., bonding) for mining operations conducted under 43 CFR 3809. In summary, the extended deadline provides the following:

- and** If operators have a plan of operations approved before January 20, 2001, They have previously posted a bond for their operation, they must post a bond that meets the bonding requirements of the new regulations by November 20, 2001.
- or** If operators have started operations under their approved plan of operations but have not yet posted a bond, they must post a bond by September 13, 2001.
- or** If operators have not yet started operations, they must not disturb any ground until they post a bond meeting the requirements of the January 20, 2001, 43 CFR 3809 regulations. In these instances, operators are asked to contact BLM at least 6 weeks before they plan to begin operations.

A draft letter is attached to assist Field Offices when contacting operators concerning this regulatory change.

Time frame: To ensure that operations are properly bonded on time, BLM must receive bond estimates by August 15, 2001 for operations under a currently posted bond and by July 20, 2001 for operations without an approved bond. BLM Field Offices are directed to notify operators by July 9, 2001 of their responsibility to provide a bond for their operations.

Manual/Handbook Sections Affected: Attached is a revised letter for operators to assist Field Offices when contacting operators.

Contact: Refer any comments or inquiries to Ralph Costa at (602)417-9349.

Denise Meridith

Attachments:

1. Revised Guidance Letter

SIGNED BY:
Lonna O'Neal
Acting State Director

AUTHENTICATED BY:
Bobbie J. Junge
Staff Assistant

REVISED GUIDANCE LETTER

Dear Operator:

Attached is a copy of our recently revised 43 CFR 3809 surface management regulations. Our records show that you are or will be conducting your mining operation under an approved plan of operations. We therefore are sending you a copy of the regulations to make you aware of your responsibility to post a reclamation bond in accord with the revised regulations. (See 43 CFR 3809.505.)

On June 15, 2001, the Bureau of Land Management (BLM) published a notice in the *Federal Register* giving operators more time to post a bond. The *Federal Register* notice and the regulations provide for the following:

If you have a plan of operations that was approved before January 20, 2001,

and

You have previously posted a bond for your operation, you must post a bond that meets the bonding requirements of the new regulations by November 20, 2001.

or

You have started operations under your approved plan of operations but have not yet posted a bond, you must post a bond by September 13, 2001.

or

You have not yet started operations, you must not disturb any ground until you post a bond meeting the requirements of the January 20, 2001, 43 CFR 3809 regulations. Allow BLM six weeks to process your bond.

To meet the current requirements of the regulations you must submit an estimate of the reclamation cost of your operation, assuming that an independent third-party contractor is doing the work under contract to BLM. Your estimate must include the cost to perform all the elements of reclamation **as stated in your present plan**, including the cost for mobilization and demobilization from the nearest population center where you can find a contractor to do the work.

You must base your cost estimate on industry standard operating cost indices, such as those provided by Western Mine Engineering, the Caterpillar Performance Handbook, or the Contractor's Equipment Guide. Labor wage rates must be the current wage rates paid to workers employed under federal contracts as required by the Davis-Bacon Act. The Davis-Bacon wage rates for "Heavy" construction (including fringes) by county for Arizona can be obtained on the Internet at www.access.gpo.gov/davisbacon/az.html. If you do not have access to the internet, please contact BLM, and we will give you the required information.

In all instances you must give BLM the exact source of the data you used in preparing the estimate, together with maps, design specifications, and calculations. Please **do not include** in your estimate contractor profit, insurance premiums, performance and payment bonds, or the cost for BLM contract administration. BLM will calculate the amount that must be added to your estimate for these items when determining the total amount of the bond you must provide.

BLM does not have agreements with state agencies to accept the bonds (or guarantees) they require for reclamation. You must include any costs for reclamation or long-term monitoring **in your approved plan in the bond estimate you provide to BLM.**

To ensure that your operation is properly bonded on time, we must receive your completed estimate at the BLM _____ Field Office by August 15, 2001 for operations under a currently posted bond and by July 20, 2001 for operations without an approved bond. We will then review your estimate and notify you through a formal decision of the exact amount of your reclamation bond. We will also give you at least 30 days to post the bond. The decision will itemize and explain any amounts added to your estimate to calculate the final bond. If we do not receive your estimate on time, we may be unable to review it soon enough to allow you to have a bond in place by the time you are required to have one. If you do not have a bond posted in accordance with the regulations, BLM may pursue an enforcement action against you under 43 CFR 3809.601.

Please mail your complete reclamation estimate to:

XYZ Field Office
Address here

Instead of submitting an estimate of your reclamation costs and posting a bond, you may elect to end your operation and reclaim the site. Should you select this option, please contact the Field Office for more information.

The following information will update you on the status of the 43 CFR 3809 regulations. BLM is facing four lawsuits over one or more elements of the regulations. In response to the issues raised in these suits BLM, in March 2001, published a proposal to suspend the regulations pending comments. BLM is now reviewing the comments and may issue revised regulations later this year. Unless and until BLM issues these revisions, the regulations issued on January 20, 2001 are in full force and effect.

Thank you for your cooperation. If you have any questions about this matter, please call _____ at _____.

Field Office Manager

Attachment
43 CFR 3809