not limited to, the parameters and assumptions used in the applicable equation in paragraph (a)(1) or (b)(1) of this section, shall demonstrate compliance with those paragraphs.

* * * * *

5. Section 63.421 is amended by adding in alphabetical order definitions for "bulk gasoline terminal" and "limitation(s) on potential to emit" to read as follows:

§ 63.421 Definitions.

* * * * *

Bulk gasoline terminal means any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

* * * * *

Limitation(s) on potential to emit means limitation(s) limiting a source's potential to emit as defined in § 63.2 of subpart A of this part.

* * * * *

6. Section 63.428 is amended by revising paragraphs (g) introductory text and (h) introductory text to read as follows:

§ 63.428 Reporting and recordkeeping.

* * * * *

(g) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall include in a semiannual report to the Administrator the following information, as applicable:

* * * * *

(h) Each owner or operator of a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart shall submit an excess emissions report to the Administrator in accordance with § 63.10(e)(3), whether or not a CMS is installed at the facility. The following occurrences are excess emissions events under this subpart, and the following information shall be included in the excess emissions report, as applicable:

* * * * *

[FR Doc. 97–4885 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP–5F4578/R2277A; FRL–5590–4]

RIN 2070–AB78

Glufosinate Ammonium; Tolerances for Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the table under § 180.473, paragraph (c) to reflect the tolerance for residues of glufosinate ammonium on corn, field, forage as stated in the petition submitted by AgrEvo USA Co.

DATES: This correction is effective on February 5, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov.

In FR Doc. 97-2838, appearing at page 5333 in the issue for Wednesday, February 5, 1997, on page 5338, in § 180.473, in the table to paragraph (c), the entry for "corn, field, forage," is corrected as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration
*	* * *	*
Corn, field, forage	4.0	July 13, 1999
*	* * *	*

List of Subjects in Part 180

Environmental protection.

Dated: February 18, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4624 Filed 2–27–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–660–4120–02–24 1A]

RIN 1004–AC40

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its surface management regulations at 43 CFR subpart 3809. The final rule requires submission of financial guarantees for reclamation of all hardrock mining operations greater than casual use, increases the types of financial instruments acceptable to satisfy the requirement for a financial guarantee, and amends the noncompliance section of the regulations to require the filing of plans of operations by operators who have a record of noncompliance. In addition, the final rule removes section 3809.1–8 on existing operations, which is no longer applicable, because all activities that were in operation in 1980 and continue in operation have now complied with this section.

EFFECTIVE DATE: March 31, 1997.

ADDRESSES: Inquiries or suggestions should be sent to the Solid Minerals Group at Director (320), Bureau of Land Management, Room 501 LS, 1849 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 452–0350.

SUPPLEMENTARY INFORMATION: On July 11, 1991 (56 FR 31602), BLM published a proposed rule to require submission of financial guarantees for reclamation for all hardrock mining operations greater than casual use, to designate additional financial instruments that would satisfy the requirement for a financial guarantee, and to amend the noncompliance section of the regulations to require the filing of plans of operations by operators who have a record of noncompliance. The extended 90-day comment period expired on October 9, 1991. The BLM received 218 comments on the proposed rule, including 3 citizen-petitions with numerous signatures. Of these comments, 58 were from public interest groups, 51 were from business entities or associations, 22 were from government agencies, and 135 were from individuals, not including the petitions. All of the comments were

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carefully considered in developing this final rule.

Three basic points of view as to the proposed rule emerged in the comments. First, a number of comments dealt with the adequacy of the bond levels, self-certification, and the number of financial instruments acceptable under the rule. The comments stated that the bond levels set in the proposed rule were too low, and that BLM should require full cost bonding for both notices and plans of operation. Those expressing concern regarding self-certification and the number of financial instruments believe the proposed rule could lead to less security. Others simply objected to self-bonding in any form. Second, mining associations and some individuals agreed that the proposed rules were necessary, but argued that the $5,000 bond for notice level operations is excessive. Third, many of the individuals argued that the proposal discriminates against small miners and would force them out of business, if implemented.

In response to the comments regarding bond levels, BLM has amended the rule to require bonds for 100 percent of the amount that would be needed to pay for reclamation by a third-party contractor using equipment from an off-site location. This will ensure that, if the bonded party fails to perform its reclamation responsibilities, BLM will have access to adequate funds through these financial guarantee arrangements to reclaim the lands, and thereby protect the interest of the public, including Federal taxpayers. Calculation of the amount is at the operator's expense, and must be certified by a third-party professional engineer registered to practice in the State in which the operations are proposed. However, this engineer's certification is not required when the requirement for a financial guarantee is met by providing evidence of an instrument held or approved by a State agency.

The comments suggesting that the bonds were insufficient also raised several other issues. For example, they asserted that the rule did not contain detailed reclamation and bond release language. Detailed guidance on reclamation is beyond the scope of this rule. However, the final rule addresses concerns about bond release in section 3809.1–9(m), as discussed below. Under the subpart 3809 regulations, further guidance on the standards for reclamation and bond release will be dealt with on a case-by-case basis at the time a notice provided for under section 3809.1–3 or a plan of operations provided for under section 3809.1–4 is received and reviewed, and would be covered as part of the review of reclamation measures incorporated into the notice or plan.

The majority of the individual comments objected to the $5,000 minimum bond required for a notice level operation. They stated that the $5,000 self-certification would be an unnecessary regulation, because reclamation of any damage caused by small miners occurs naturally during the first winter. Those who identified themselves as recreational miners considered the proposal to be unfair, because it requires too great an expenditure. Many individual comments opposed the $5,000 financial guarantee, arguing that even self-certification would be burdensome and force small miners and prospectors out of business. Two individual comments favored the proposal, citing firsthand experience of the environmental impact of small mining operations.

The proposed rule was drafted with the assumption that notice-level operators likely would use the full 5 acres allowed and certify the existence of the full $5,000 guarantee for the entire acreage at the $1,000 per acre exploration level cap. The final rule requires the financial guarantee to cover 100 percent of the estimated costs of reclamation, with the minimum acceptable amount being $1,000 for each acre or fraction thereof disturbed.

Specific Comments

In the following portion of the preamble, comments will be discussed as they relate to various specific sections of the rule.

Section 3809.0–5 Definitions

This section of the proposed rule would have added definitions for the terms "exploration operations" and "mining operations," and redesignated the other paragraphs to accommodate these additions. These proposed definitions were to be used to differentiate between the maximum guarantee amounts ordinarily to be required. However, since the rule has been changed elsewhere in accordance with public comments to require financial guarantees to cover 100 percent of the estimated costs of reclamation for all operations other than casual use, these definitions are no longer needed. Therefore, the proposed revisions to section 3809.0–5 are omitted in the final rule.

Section 3809.0–9 Information Collection

This section codifies the note that appeared at the beginning of Group 3800, and revises it to comply with current OMB regulations. A notice of BLM's request for approval of the information collections in subparts 3802 and 3809 was published in the **Federal Register** on March 5, 1996. Three comments responded to the notice, two within the public comment period. Two of the comments supported the information collection. A third objected to perceived redundancies in the information collection proposal. The supposed repetitiveness was only apparent; similar information is to be collected under each of two subparts covered by the request, but will not be collected twice for the same operation. The comment also seemed to treat the notice as pertaining to a proposed rule rather than in part to existing regulations, and objected to provisions dealing with aircraft operations in subpart 3802, arguing that BLM lacked jurisdiction. However, BLM managers do in fact manage aircraft landing areas in wilderness study areas under subpart 3802. These comments did not lead to changes in the information collection. The estimated public reporting burden is estimated to be 16 hours per response for notices and 32 hours per response for plans of operations.

Section 3809.1–9 Financial Guarantees

This section states clearly that obtaining a bond or other financial guarantee is a prerequisite to operating on an unpatented mining claim under a notice or plan of operations. It lists the types of guarantees that are acceptable, and requires that they cover the entire estimated cost of reclamation. It requires that operators report their financial guarantees to BLM and include certain enumerated information with the report. The section also provides for partial release under the guarantees when phases of reclamation are completed, and states the consequences of default or bond deficiency.

A new paragraph (a) has been added to this section in the final rule to make it clear that initiating operations under a notice or conducting operations under a plan of operations without a required financial guarantee is prohibited by regulation. Among other remedies available to the government, such conduct may be prosecuted under section 303(a) of the Federal Land Policy and Management Act (FLPMA), which provides criminal penalties for the knowing and willful violation of the regulations.

Proposed paragraph (a) is redesignated as (b) in the final rule. This paragraph, as proposed, removed language from the current regulations

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exempting notice level operations from posting a financial guarantee. One comment observed that almost any normal mining activity exceeds the definition of casual use in subpart 3809 and implied that the paragraph excepting casual use from bonding requirements serves no use. No change is made in the final rule as a result of this comment. Much exploratory activity that does not require a notice to be submitted can and does take place on public lands, whether on mining claims or not: for example, exploratory activity that does not require mechanized earth-moving equipment or explosives.

Section 3809.1–9(c). Proposed paragraph (b), which has been redesignated as paragraph (c) in the final rule, would have: (1) Required certification of a financial guarantee, (2) established a guarantee amount of $5,000, (3) allowed a choice of financial instruments, (4) provided that the guarantee may be met by providing evidence of a State-held bond, (5) required the certification to accompany the filed notice, (6) permitted the authorized officer to return incomplete notices for failure to have the certification, (7) required the funds to remain available until the authorized officer has absolved the operator of reclamation responsibilities, and (8) held the operator to the reclamation standards in section 3809.1–3(d).

A number of comments addressed the various proposed requirements in this paragraph of the proposed rule.

(1) Certification of a financial guarantee.

Two comments suggested that a better course of action would be for the BLM to have the guarantee in hand rather than a certification that a guarantee exists. They cited a perceived tendency for small operators who commit violations to leave the vicinity or not restart operations on public lands, because many miners only have one operation in their lifetime and the possibility of not being able to obtain a financial guarantee for future operations is not a credible deterrent. They also cite the high cost of prosecutions.

We acknowledge the potential for such problems. The model for this proposal is the self-certification system used in administering State requirements for automobile insurance. Citizens do not customarily hand the policy to the State, but certify that it has been obtained and is available for use. Failure to have the insurance brings the imposition of penalties by the State. Notices and plans of operation will be required to contain the social security number of the operator or the employer identification number of operators or agents. Ultimately, however, the mining claimant will be responsible for the activity on the mining claim.

There will be a lower administrative cost using the certificate system since collecting the actual financial instruments necessarily would require funding for the administrative overhead to accept, sort, and process the instruments, and maintain facilities for secure storage. Second, the sanctions for noncompliance can be severe, and can in appropriate cases include criminal penalties authorized by Section 303(a) of FLPMA for knowing and willful violations of these regulations. These sanctions will be used against operators who abandon operations after committing violations.

This rule also incorporates the maximum penalties provided for in the Sentencing Reform Act of 1989 (18 U.S.C. 3571 *et seq.*). Penalty provisions such as those in FLPMA that provide for up to a year in jail or a fine of $1,000 for violators are classified as Class A misdemeanors under 18 U.S.C. 3571, and the Sentencing Reform Act provides for fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

(2) The guarantee amount of $5,000.

This provision of the proposed rule generated the largest number of comments. Many stated that the proposed $5,000 guarantee would be excessive, burdensome, discriminatory, and damaging to small operators. On the other hand, other comments stated that the amount was insufficient for complete reclamation.

In drafting the proposed rule, it was assumed that notice level operators would use the full 5 acres allowed and be bonded for the same at the proposed exploration level cap, which was $1,000 per acre. Many comments suggested that financial guarantee requirements should be based on actual acreage disturbed. This suggestion has been adopted in the final rule. The final rule requires bonding sufficient to cover 100 percent of the estimated costs of reclamation with a $1,000 minimum rate for each acre disturbed. The minimum acceptable amount will be $1,000 if the area disturbed is less than one acre.

(3) Allowing for a choice of financial instruments.

Individual and industry association comments generally approved of the option to choose the financial instrument. Environmental groups expressed reservations as to the use of instruments with greater associated risk, such as mortgages on mining properties and liens on equipment. We acknowledge the increased risk associated with these types of instruments. In response, the rule has been amended to remove the provision for the use of mortgages on mining property and first liens on equipment.

One comment suggested that whatever financial instrument is approved, it must be redeemable by the Secretary. For plan level operations, the suggestion is a logical extension of the BLM holding the guarantee. The rule has been amended to incorporate this change for plan-level operations. For notice-level activities, this would be an unnecessary administrative burden on the operator and the authorized officer. The authorized officer does not hold the guarantee for notice-level activities, but rather the certification. If the comment were adopted in the final rule, operators would be required to get the instrument released by the authorized officer, creating an unnecessary administrative burden. Therefore, the comment is not adopted for notice-level activities.

(4) The guarantee may be met by providing evidence of a State-held bond.

This continues the provisions of the existing regulations.

(5) The certification is required to accompany the filed notice.

(6) The authorized officer may return incomplete notices for failure to have the certification.

One comment observed that nothing in the regulations requires the notice to be complete and that the notice does not have to be approved, adding that the provision regarding the notice should be modified to create a completeness review or a notice approval process. The comment observed that the situation renders the return of the notice irrelevant. As a clarification and to achieve the same purpose as the return of a notice submitted without a financial guarantee certificate, the final rule incorporates language at section 3809.1–9(a) stating that conducting operations under either a plan or a notice prior to submission of the appropriate financial guarantee is prohibited. Section 3809.3–2 on noncompliance has been amended by adding paragraph (f) to set forth the penalties contained in the statute for those who commit prohibited acts. For notices filed after the effective date of the regulations, the certification set out in paragraph (c) of this section must accompany the notice. For existing notices on file with BLM that cover active ongoing operations predating the effective date of this rule (including operations suspended due to weather), no certification is required until a new notice is filed. For existing notices on file with BLM, the claimant or operator will have to provide the certification before initiating operations.

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(7) The funds are required to remain available until the authorized officer has absolved the operator of reclamation responsibilities.

As discussed below, in response to comments, a procedure for phased release or reduction of bonds as reclamation phases are completed has been included in section 3809.1–9(m) of the final rule.

(8) The operator is held to the reclamation standards in section 3809.1–3(d).

Among the general comments were several statements that BLM should develop "clear reclamation standards" and, as a Federal agency, should take the lead in "defining performance standards." The BLM currently has regulations at 43 CFR 3809.1–3(d) and 3809.1–5(c) that govern reclamation standards. Reexamination of their adequacy is beyond the scope of this rule.

Section 3809.1–9(d). This paragraph was paragraph (c) in the proposed rule, and has been redesignated as (d) in the final rule. In the final rule, this provision requires the certification for notice-level operations to include the name, home address, home and office phone number, and social security or employer identification number of the operator, mining claimant, or its agent. It requires the operator, mining claimant, or its agent to make various statements about the financial guarantee as part of the certification, including: (1) That the mining claimant or operator for whom the individual is submitting the certification is responsible for the reclamation; (2) that the financial guarantee exists in the required amount, and its location; (3) that the guarantee will be delivered on demand within 45 days; (4) a statement acknowledging that surrender of the guarantee does not absolve the operator, mining claimant, or agent, from responsibility and does not release or waive any claim BLM may have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or any other applicable statutes, or any regulations; and (5) a statement acknowledging that failure to have the guarantee as certified, or failure to provide the guarantee upon demand by the authorized officer may result in prosecution under the appropriate Federal statutes.

Many of the comments that generally objected to the proposed rule also objected to the content of this certification, suggesting that it assumed all operators were guilty until proven innocent. The purpose of the regulation is, however, to create a set of known standards by which to judge the performance of the notice-level operator with respect to having and maintaining the financial guarantee. Because BLM is not now requiring notice operators to supply the guarantee itself to BLM, but only to certify its existence, it is important that the operator understands fully and acknowledges his or her obligations in this regard.

One comment stated that 45 days (plus an additional 45 days, if authorized) was too long a period of time for the Government to wait for the guarantee. The time period is retained in the final rule because some instruments allowed under the rule may take time to be liquidated.

One statement observed that there was some confusion in determining the responsible party in the proposed language. The purpose of the provision is to designate a responsible party. That party may be a representative of a corporate operator. If an individual can speak for the corporation in filing a notice and a guarantee, then the same individual can bind the company to do the reclamation.

Proposed section 3809.1–9(d), redesignated as (e) in the final rule, requires each of the statements included with the certification to be initialed and dated. Failure to initial each statement will result in return of the certificate. One comment stated that this was unnecessary and that the signing and the dating of the entire certificate should suffice. Another comment noted that this procedure was overly bureaucratic. Section 3809.1–9(e) is retained in the final rule, because these separate acknowledgments will serve to establish the knowledge and legal accountability of mining claimants and operators who will be permitted under the regulations to self-certify that they have adequate financial guarantees.

Proposed section 3809.1–9(e), redesignated as (f) in the final rule, has been amended for clarification to limit its application to notice-level operators.

Proposed paragraphs (f) and (g) of section 3809.1–9, redesignated as (g) and (h) in the final rule, would have required the plan-level operator to post a bond, and required the authorized officer to set the amount at a level sufficient to pay for reclamation if the plan-level operator fails to perform the work. However, the bond requirements for exploration and mining would have been limited to $1,000 and $2,000 per acre, respectively, except that operators in noncompliance with submitted plans of operations and notices would have been required to post 100 percent bonds.

Numerous comments opposed the provisions for bond caps in the proposed rule. Many stated that the caps were far too low. One comment stated that they were too high. Another stated that there should be no bonds required of operators who do not have a record of noncompliance.

The BLM has reviewed the bonding requirements proposed in light of the comments and has decided to amend the bond amounts based on these comments. The financial guarantee requirements in the rule have been amended to require the guarantee to cover 100 percent of the estimated costs of reclamation. The final rule also states the minimum amount required for a financial guarantee, $1,000 per acre for notice-level activities and $2,000 per acre for plan-level activities. The role for financial guarantees required and held by BLM will be to ensure that money sufficient to cover full reclamation costs is available.

Proposed section 3809.1–9(h) would have required those portions of operations utilizing cyanide or other leach solutions to be bonded at 100 percent. Several comments said that the failure to include vat leach and other facilities storing or receiving solutions containing cyanide or other leach solutions in this section was improper. One comment considered the entire proposal onerous and objected to the inclusion of other leach solutions. Other comments suggested that this section be made discretionary. These comments are resolved by changes made elsewhere in the final rule, which requires all plan-level operations to be covered by 100 percent financial guarantees. A separate specific 100 percent bonding requirement for cyanide and similar operations is therefore no longer necessary—it is subsumed in the general requirement. Accordingly, this paragraph has been removed in the final rule.

Section 3809.1–9(i), as proposed, would have allowed the authorized officer to review and accept or reject any of the types of financial instruments offered by the plan level operator, including first lien security interests on mining equipment. Several comments questioned the use of this instrument, as well as first mortgages and first deeds of trust, as too risky. Upon reflection, we agree. The provisions for allowing such instruments as guarantees have been removed in the final rule. However, this paragraph has been amended in the final rule to make clear that, for purposes of the financial guarantee requirements of this section, BLM will honor the financial guarantees chosen by the affected State, if the BLM finds

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that the instrument held by the State provides the same guarantee as that required by the final rule.

Section 3809.1–9(j) allows for review of operations conducted under an approved plan of operations and readjustment of the financial guarantee. The final rule allows the operator to submit a new (and less expensive, if available) form of guarantee subject to the approval of the authorized officer. This was generally supported by the comments.

Section 3809.1–9(k) allows the use of traditional instruments and expands the list to include a large number of non-traditional instruments. Most of the comments that addressed this provision generally supported it, some suggesting that second mortgages should be added to the list. One comment suggested that any instrument acceptable to the State should be acceptable to BLM. So long as the State holds the instrument the BLM will not intervene, but for security interests to be held by the United States, acceptable instruments are limited to those listed in the regulations. One comment suggested that taking a first mortgage on a mining property might lead to difficulties and potential liability risk to the United States from with hazardous materials. Upon reflection, we agree. Therefore, mortgages and liens on real property will not be acceptable as financial guarantees under this final rule.

Some comments generally disapproved of this expansion of possible security instruments, stating that there appeared to be no problem in getting traditional surety bonds. Contrary to this view, it appears that there may be a problem for the smaller operator. These same comments also took exception to the use of instruments that might not be entirely liquid and which upon liquidation may not cover the full amount. While the list of acceptable instruments is expanded to include State and municipal bonds, the final rule also incorporates changes to ensure that the security provided at the time required is not reduced by market fluctuations in the value of government-issued and commercial securities. The BLM has determined that the risk associated with expanding the range of choice of security instruments is acceptable. Whatever additional risk may be involved is offset, at least somewhat, by the amendment requiring that financial guarantees be equal to an independent professional engineer's estimate of reclamation costs. It is important to recall, in this connection, that the financial guarantee and the duty to reclaim are backed up by criminal penalties, and by the provision that the operator is not free of liability if the guarantee is cashed in and found insufficient.

By irrevocable letter of credit, section 3809.1–9(k)(3) means a letter of credit, such as described in 43 CFR 3104.1(c)(5), that identifies the Secretary of the Interior as sole payee with full authority to demand immediate payment in case of default. It must be subject to automatic renewal for periods of not less than 1 year if the mining claimant or operator fails to notify the proper BLM office of its nonrenewal and replacement by other suitable financial guarantee before the originally stated or any extended expiration date. Such letters of credit must also provide that they can be forfeited and collected by the authorized officer if not replaced by other suitable financial guarantee before their expiration date.

Section 3809.1–9(l) continues the current practice of accepting blanket statewide and nationwide bonds found in the existing regulations. This provision was generally supported in some comments, and generally opposed, without stated rationale, in others. No change is made in the final rule. Failure to reclaim will lead to forfeiture of an appropriate portion of the statewide or nationwide bond and could result in the loss of the ability to obtain any future bonds.

Section 3809.1–9(m) covers reclamation and bond release. Two comments suggested that BLM allow for bond reduction as reclamation steps are completed. Upon reflection, we agree.

Section 3809.1–9(m) in the final rule includes a procedure for phased release or reduction of bonds as reclamation phases are completed, as suggested in the comments. A guarantee will not be released until successful revegetation has been demonstrated. Limitations are also placed on release of financial guarantees in order to protect water quality.

Paragraphs (n) through (p) of section 3809.1–9, were added to the final rule based on public comment. They describe the procedures used by BLM to collect financial guarantees in order to carry out or contract for any needed reclamation not performed by the operator or mining claimant. These sections are being incorporated in the final rule to ensure a degree of uniformity in the procedures used by the various offices of the BLM in the collection and use of financial guarantees, and to complete the logical sequence of events encouraging reclamation.

Section 3809.1–9(n) of the proposed rule, redesignated as paragraph (q) in the final rule, covers release of the operator from the financial guarantee or a portion thereof upon patenting of a mining claim. One comment suggested requiring all portions of the patented claim not then being mined to be reclaimed and the part still being mined to be covered by the State requirements prior to title transfer. Such requirements would be unnecessary, because most States have mining and reclamation programs that require reclamation of private lands, including lands obtained through patents from the United States. As elsewhere, references to the mining claimant have been added in this paragraph to make it consistent with other provisions in the final rule.

Section 3809.3–1. This proposed section added a requirement in paragraph (b) for the State Director to review the list of appropriate and legal financial instruments available in the State and to publish it on a yearly basis. No significant comments were noted. However, this section has been amended editorially for purposes of brevity and clarity in the final rule.

Section 3809.3–2(e). This proposed section explained what is meant by a record of noncompliance, imposed mandatory BLM-held bonding on operators with a record of noncompliance, made State-held bonds unacceptable for those with records of noncompliance, and allowed the BLM to require all existing and subsequent notice-level operations by such an operator to be conducted only under a plan. It also allowed the State Director to determine the length of time that an operator will be held to the mandatory plan provisions (not less than 1 year and not more than 3 years).

One comment objected to the proposed language stating that financial guarantees held by the State would not be acceptable and would result in the double bonding of operators by the State and the BLM. We acknowledge this possibility, but additional security is justified when operators have compiled a record of noncompliance. No change to accommodate this comment is made in the final rule.

Two comments stated that provisions of section 3809.3–2(e) do not allow for due process. One suggested alternative language that incorporated "due process" while the other suggested that the language of the existing section (e) would be more balanced in protecting the due process rights, because it uses "may" rather than "shall." The rule applies to an operator who ignores a notice of noncompliance. The appeals section of the existing regulations (not amended in this rule) includes opportunity for appeal at two levels, State Director and Interior Board of

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Land Appeals. This provides sufficient protection of a party's due process rights.

One comment stated that the language in the proposed section would allow an operator to move across a State line and start with a clean record. This result was not intended in the proposed rule, and nothing in the rule requires such a narrow reading. The BLM's recordkeeping system allows proscriptions imposed in one State to be maintained BLM-wide.

One comment suggested alternative language to define when an operator has compiled a record of noncompliance and to provide additional clarity to the rule:

1. To make it clear that operators who establish a record of noncompliance will be considered in active noncompliance until the necessary actions required by the notice of noncompliance have been completed;
2. To include a 30-day time frame for the conversion of existing notices to plans;
3. To include 90-day deadlines for the filing of the mandatory financial guarantees with the authorized officer, specifying that failure to provide the guarantee will result in the withdrawal of all existing plan approvals;
4. To provide that BLM will approve no new or additional plans or plan amendments of operators who have established a record of noncompliance and who remain in active noncompliance;
5. To extend the prohibition to proprietors, partners, principals, managers, directors, or officers of the operator in active noncompliance who are responsible for the continuing noncompliance.

Another comment suggested that an operator who has a record of noncompliance should be denied all additional approvals until all prior reclamation commitments have been satisfied and all costs incurred by the surety companies or the government have been reimbursed.

The suggestion that would have BLM bar an operator or mining claimant in noncompliance, and its responsible affiliates, from obtaining new or additional approvals has not been adopted in the final rule. The BLM will study this suggestion further and may propose such a change in a future rulemaking. With limited modifications to the suggested language, the remaining suggestions are adopted, so that proposed section 3809.3–2(e) is revised in the final rule.

Section 3809.3–2(f) is added merely to reiterate the penalties contained in Section 303 of FLPMA for those who violate the regulations of subpart 3809. In response to a comment that discussed the weakness of the proposed language authorizing the return of incomplete notices, a new paragraph 3809.1–9(a) is being added to prohibit the conduct of operations without posting the appropriate financial guarantees. Then, to notify the public of the penalties associated with the violation of the regulations in subpart 3809, and to codify the penalties contained in FLPMA, the noncompliance section is also amended by adding paragraph (f). This paragraph incorporates the maximum penalties provided for in the Sentencing Reform Act of 1984 (18 U.S.C. 3571 *et seq.*), in order to bring the rule into compliance with law, and to avoid the misleading impression created by the current regulations that penalties are limited to the minimal amounts provided for in FLPMA. Penalty provisions such as those in FLPMA that provide for up to a year in jail or a fine of $1,000 for violators are classified as Class A misdemeanors under 18 U.S.C. 3561, and the Sentencing Reform Act provides for fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations. As noted in the rule, the Sentencing Reform Act also authorizes the imposition of alternative fines based upon a doubling of the pecuniary gain to the defendant or loss to other persons resulting from a violation.

The principal author of this final rule is Richard Deery of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Management Group, BLM.

Compliance With the National Environmental Policy Act

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C)) is required. It has been determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. This item states that "Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature * * *" are categorically exempt. Because this rule addresses financial guarantees, we believe that it falls into this category, thereby obviating any further review under NEPA. It has also been determined that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Compliance With Executive Order 12866

This rule has been reviewed under Executive Order 12866. The Department of the Interior has found, based on the economic analysis contained in a Determination of Effects of Rule that is available for inspection in the office of the Solid Minerals Group at the address given in **ADDRESSES**, above, that this document is not likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The current surface management regulations at 43 CFR subpart 3809 provide for 3 levels of activity involving surface use of public lands for mineral exploration and mining: (1) Casual use, causing no noticeable surface disturbance, which does not require notification to BLM of the activity; (2) notice-level activity, exceeding the threshold of casual use but not disturbing more than 5 acres per calendar year, which requires a notice to BLM before proceeding but no BLM approval or operator financial guarantee; (3) plan-level activity, disturbing more than 5 acres annually, which requires a plan approved by BLM, full NEPA compliance, and, since 1990, full cost financial guarantees.

Except for Arizona, Nevada, Alaska, and Utah, the public lands States all require some bonding for notice-level mining and mineral exploration activities. Under this rule, BLM will accept these State bonds in satisfaction of the Federal bonding requirement in most circumstances for notice-level activities—most operations at this level are bonded at "full cost bonding" under State laws. It follows that this rule will have an effect on notice-level activities in primarily the four States mentioned above. The effects on activities in these States cannot be assigned to specific localities within the States, and are presumed to be distributed evenly

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throughout each State for purposes of this analysis.

BLM expects that corporate operators will use nationwide or statewide financial instruments, and that individual and other small operators will use project-specific financial instruments. The total economic effect of this rule is projected to be $17.10 million. The Determination of Effects includes details on how BLM reached this conclusion.

The benefits attributable to this rule result from avoiding future costs through mandatory bonding. While these savings are not predictable in the strict benefit-cost analysis sense, we discuss them here. Primarily, savings will be derived from marginal activities with limited capitalization being postponed or not carried out, and failures will not occasion reclamation costs to the public. Remaining operations would be financially stronger and less likely to fail, and if bonds are in place, public costs of failure will be minimized. Other savings will be caused by the discouraging of illegal activities or non-mining industrial activities that are sometimes disguised as mining on public lands. The bonding requirement will tend to reduce the initiation of such activities and pay for costs of cleanup.

The final rule will not adversely affect the ability of the mineral industry to compete in the world marketplace, nor should it affect investment or employment factors locally. Major corporations, large-scale companies with world-wide operations and lines of credit with commercial banks can easily absorb any additional financial responsibility created by the rule.

"Junior companies," large limited partnerships or wholly-owned domestic subsidiaries of venture capital-based mining companies, many of which are based in Canada, tend to grow or merge into smaller major corporations, or to fail. Generally regarded as risk takers, they are often found in frontier areas and are willing to acquire properties overlooked or discarded by majors. Their options for complying with the rule will range from resorting to established lines of credit to posting company assets as collateral to internal cash flows. The amended dollar amounts for notices in the final rule will benefit these operators by encouraging them to minimize surface disturbance and reduce the amount of reclamation liability.

Individuals and other small operators will have the fewest options for funding financial guarantees: operating cash flows, individual or company assets. The likely effect of this rule will be to limit the number of notice-level operations for each such operator at any one time. They may elect to restrict activities under a notice to only the most promising mineral prospects or to attempt to option out the property to a junior or major company with a lease agreement that includes a clause requiring the lessee to obtain and maintain the necessary financial guarantee with BLM.

Compliance With Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the final rule will not have a significant economic impact on a substantial number of small entities. The reasons for this determination are stated here and may also be found in the Determination of Effects cited above.

For the purposes of this analysis, a small entity is considered to be an individual, small firm, or partnership at arm's length from the control of any parent companies. The juniors and majors (not considered small entities), as discussed in the previous paragraphs, and entities under their direct control, have access to lines of credit and internal corporate cash flows that are not available to small entities.

The economic effect on these small operators will be either to require them to acquire a financial guarantee for each new notice or avoid new operations on claims for which they do not acquire a financial guarantee. Since small entities often hold several properties, the practical effect will be the elimination of new activities on certain claims, especially the marginal ones, and the removal of some properties from their inventory of holdings, or else operators will attempt to lease the claim to a junior or major company that has the financial resources to post financial guarantees. Therefore, the short-term impact of this rule on small entities will be to curtail some of their prospective notice-level activities.

Compliance With Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. It does not provide for the taking of any property rights or interests. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Compliance With Paperwork Reduction Act

The information collection requirement(s) contained in this rule have been approved by the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1004–0176.

Compliance With Unfunded Mandates Reform Act

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Compliance With Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 2(b)(2) of Executive Order 12988.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental affairs, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

For the reasons stated in the preamble, and under the authorities cited below, Part 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: February 24, 1997.

Sylvia V. Baca,

Assistant Secretary of the Interior.

1. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 351; 16 U.S.C. 460y–4; 30 U.S.C. 22; 31 U.S.C. 9701; 43 U.S.C. 154; 43 U.S.C. 299; 43 U.S.C. 1201; 43 U.S.C. 1740; 30 U.S.C. 28k.

Subpart 3809—Surface Management

2. The authority citation for 43 CFR subpart 3809 is removed.

3. Section 3809.0–9 is added to read as follows:

§ 3809.0–9 Information collection.

(a) The collections of information contained in subpart 3809 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0176. BLM will use the information in regulating and monitoring mining and exploration operations on public lands. Response to requests for information is

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mandatory in accordance with 43 U.S.C 1701 *et seq.* The information collection approval expires December 31, 1999.

(b) Public reporting burden for this information is estimated to average 16 hours per response for notices and 32 hours per response for plans of operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, D.C. 20240, and the Office of Management and Budget, Attention Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, referring to information collection clearance number 1004–0176.

§ 3809.1–8 [Removed]

4. Section 3809.1–8 is removed.

5. Section 3809.1–9 is revised to read as follows:

§ 3809.1–9 Financial guarantees.

(a) No operator or claimant shall—

(1) Initiate operations under a notice without providing the authorized officer certification of the existence of the appropriate financial guarantee as required by paragraph (c) through (f) of this section; or

(2) Conduct operations under a plan of operations without providing the authorized officer with the appropriate financial guarantee as required by paragraphs (g) through (j) of this section.

(b) No financial guarantee is required for operations that constitute casual use under § 3809.1–2.

(c) No operations conducted under a notice in accordance with § 3809.1–3 shall be initiated until the operator or mining claimant provides to the authorized officer a certification that a financial guarantee exists to ensure performance of reclamation in accordance with the requirements of § 3809.1–3(d). Each certification must be accompanied by a calculation of reclamation costs of the proposed activities covered by the notice, as if third party contractors were performing the reclamation after the site is vacated by the operator. This calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed. However, when the requirement for a financial guarantee is met by providing evidence of an instrument held by a State agency as provided in this paragraph, the certificaton of costs by a third party professional engineer is not required. The financial guarantee must be sufficient to cover 100 percent of the estimate of the costs of reclamation, as calculated above, required by State and Federal laws and regulations, and may be in any of the forms described in paragraphs (k) and (l) of this section. In calculating the amount of the financial guarantee, each acre of disturbance or fraction thereof shall require not less than $1,000. The financial guarantee may also be met by providing evidence of an appropriate instrument held or approved by a State agency pursuant to State law or regulations so long as the instrument is equivalent to that required by this section, is redeemable by the Secretary, acting by and through BLM, and covers the same area covered by the notice. The certification must accompany the notice submitted to the proper BLM office having jurisdiction over the land in which the claim or project area is located. Failure to submit a complete certification will render the notice incomplete and it will be returned by the authorized officer. The financial guarantee covered by the certification must be available, until replaced by another adequate financial guarantee with the concurrence of the authorized officer or until released by the authorized officer, for the performance of such reclamation as required by § 3809.1–3. Such reclamation shall also include all reasonable measures identified as the result of the consultation required by the authorized officer under § 3809.1–3(c). If there is a material change in any financial guarantee on which the operator or mining claimant's certification is based, the operator or mining claimant must submit an amended certification to the authorized officer within 45 days after the material change occurs.

(d) The certification submitted by the operator, mining claimant, or its authorized agent, for any operations conducted under a notice, shall include:

(1) The name, home address, office and home telephone numbers, and social security number or employer identification number of the operator, mining claimant, or authorized agent;

(2) A statement that the mining claimant or operator for whom the individual is submitting the certification will be responsible for the required reclamation;

(3) A statement that the authorized officer will be notified at the completion of reclamation operations to arrange for a final inspection;

(4) A statement that the financial guarantee in the amount of the estimated reclamation costs, as calculated under § 3809.1–9(c), or $1,000 per acre or fraction thereof of disturbance as described in the attached notice, whichever is greater, exists, followed by a complete description of the financial guarantee and its location;

(5) A statement that the financial guarantee in the amount of the estimated reclamation costs, as calculated under § 3809.1–9(c), or $1,000 per acre or fraction thereof of disturbance, whichever is greater, will be delivered to the authorized officer within 45 days of a demand for its surrender, following failure to complete reclamation, unless an additional period of time not to exceed 45 days is granted in writing by the authorized officer;

(6) A statement acknowledging that surrender of the financial guarantee will not release the operator, mining claimant, or authorized agent from responsibility to ensure completion of the reclamation should the amount of the guarantee be insufficient to complete all required reclamation;

(7) A statement acknowledging that release of the requirement to maintain the financial guarantee does not release or waive any claim the Bureau of Land Management may have against any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or any other applicable statutes or any applicable regulations; and

(8) A statement acknowledging that non-existence of the financial guarantee or the failure to provide the guarantee upon demand for its surrender by the authorized officer may result in prosecution under 18 U.S.C. 1001, 43 U.S.C. 1733, or other appropriate authorities.

(e) Each statement required by paragraph (d) of this section to be included with the certification must be initialed and dated by the individual submitting the certification. Failure to initial all statements will result in the certification and the notice being returned as incomplete by the authorized officer.

(f) At any time, the authorized officer may require the notice-level operator or mining claimant to demonstrate the existence of the guarantee set out in the certification described in paragraph (c) of this section.

(g) Each operator or mining claimant who conducts operations under an approved plan of operations shall furnish to the authorized officer a

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financial guarantee in an amount specified by the authorized officer. In determining the amount of the guarantee, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed, including the cost to the BLM of conducting the reclamation, using either contract or government personnel.

(h) For activities conducted under a plan of operations, the financial guarantee must be sufficient to cover 100 percent of the costs of reclamation required by State and Federal statutes and regulations and calculated as if third party contractors were performing the reclamation after the site is vacated by the operator. This calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed, but when the requirement for a financial guarantee is met by providing evidence of an instrument held or approved by a State agency, the certification of costs by a third party professional engineer will not be required. This calculation must be agreed to by the authorized officer. In no case shall the financial guarantee be less than $2,000 per acre or fraction thereof.

(i) In lieu of requiring the financial guarantee as provided in paragraph (g) of this section, the authorized officer may accept evidence of an existing financial guarantee under State law or regulations, if it is redeemable by the Secretary, acting by and through the authorized officer, and held or approved by a State agency for the same area covered by the plan of operations, upon determining that the instrument held or approved by the State provides the same guarantee as that required by this section, regardless of the type of financial instruments chosen by the State. The operator or mining claimant proposing a plan of operations may offer for the approval of the authorized officer any of the financial instruments listed in paragraphs (k) and (l) of this section. The authorized officer may reject any of the submitted financial instruments, but will do so by decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering. If the State makes a demand against the financial guarantee, thereby reducing the available balance, the operator or mining claimant must replace the amount of reduced financial guarantee with another financial guarantee instrument acceptable under this subpart.

(j) In the event that an approved plan is modified in accordance with 3809.1–7, the authorized officer will review the initial financial guarantee for adequacy and, if necessary, require the operator or mining claimant to adjust the amount of the financial guarantee to cover the estimated cost of reasonable stabilization and reclamation of areas disturbed under the plan as modified. Operators or mining claimants with an approved financial guarantee may request the authorized officer to accept a replacement financial instrument at any time after the approval of an initial instrument. The authorized officer shall review the offered instrument for adequacy and may reject any offered instrument, but will do so by a decision in writing, with a complete explanation of the reasons for the rejection, within 30 days of the offering.

(k) Provided that the State Director has determined that it is a legal financial instrument within the State where the operations are proposed, the financial guarantee may take the form of any of the following:

(1) Surety bonds, including surety bonds arranged or paid for by third parties.

(2) Cash in an amount equal to the required dollar amount of the financial guarantee, to be deposited and maintained in a Federal depository account of the United States Treasury by the authorized officer.

(3) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States.

(4) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation.

(5)(i) Any instrument listed in paragraph (k)(5)(i)(A) or (B) of this section having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through the authorized officer.

(A) Negotiable United States Government, State and Municipal securities or bonds.

(B) Investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

(ii) Notwithstanding the provision in paragraph (c) of this section that an operator or mining claimant conducting operations under a notice need only provide the authorized officer with a certification of the existence of the required financial guarantee, and notwithstanding the provision in paragraph (g) of this section that an operator or mining claimant conducting operations under an approved plan of operations must furnish the required financial guarantee to the authorized officer, any operator or mining claimant who chooses to use the instruments permitted under this paragraph (k)(5) in satisfaction of such provisions, must provide the authorized officer, prior to the initiation of such operations and by the end of each quarter of the calendar year thereafter, a certified statement describing the nature and market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account.

(iii) The operator or mining claimant must review the market value of the account instruments by no later than December 31 of each year to ensure that their market value continues to be not less than the required dollar amount of the financial guarantee. When the market value of the account instruments has declined by more than 10 percent of the required dollar amount of the financial guarantee, the operator or mining claimant must, within 10 days after its annual review or at any time upon the written request of the authorized officer, provide additional instruments, as defined in paragraphs (k)(5)(i)(A) and (B), to the trust account so that the total market value of all account instruments is not less than the required dollar amount of the financial guarantee. The operator or mining claimant must send a certified statement to the authorized officer within 45 days thereafter describing the actions taken by the operator or mining claimant to raise the market value of its account instruments to the required dollar amount of the financial guarantee. The operator or mining claimant must include copies of any statements or reports furnished by the brokerage firm to the operator or mining claimant documenting such an increase.

(iv) Whenever, on the basis of a review conducted under paragraph (k)(5)(iii) of this section, the operator or mining claimant ascertains that the total market value of its trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, the operator or mining claimant may request and the authorized officer will authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee, if the operator or mining claimant is in compliance with the terms and

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conditions of its notice or approved plan of operations.

(l) In place of the individual financial guarantee on each separate operation, a blanket financial guarantee covering statewide or nationwide operations may be furnished at the option of the operator or mining claimant, if the terms and conditions are determined by the authorized officer to be sufficient to comply with the regulations in this subpart.

(m) When all or any portion of the reclamation has been completed in accordance with a notice submitted pursuant to § 3809.1–3 or an approved plan of operations, the operator or mining claimant may notify the authorized officer that such reclamation has occurred and may request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer will promptly inspect the reclaimed area with the operator. The authorized officer will notify the operator, in writing, whether the financial guarantee can be reduced, the reclamation is acceptable, or both. The authorized officer may reduce the financial guarantee by an appropriate amount, not to exceed 60 percent of the total estimated costs of reclamation as calculated in accordance with paragraph (c) or (h) of this section, if the authorized officer determines that a portion of the reclamation has been completed in accordance with applicable requirements, including, but not limited to, requirements for backfilling, regrading, establishment of drainage control, and stabilization and neutralization of leach pads, heaps, leach-bearing tailings, and similar facilities. The authorized officer will not release that portion of the financial guarantee equal to 40 percent of the total estimated costs of reclamation until the area disturbed by operations has been revegetated to establish a diverse, effective, and permanent vegetative cover, and until any effluent discharged from the area has met, without violations and without the necessity for additional treatment, applicable effluent limitations and water quality standards for not less than 1 full year. Any such release of the financial guarantee does not release or waive any claim BLM may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or any applicable regulations.

(n) If an operator or mining claimant refuses or is unable to conduct reclamation as provided in the reclamation measures incorporated into its notice or approved plan of operations or the regulations in this subpart, if the terms of the notice or decision approving a plan of operation are not met, or if the operator or mining claimant defaults on the conditions under which the financial guarantee rests, the authorized officer shall take the following action to require the forfeiture of all or part of a financial guarantee for any area or portion of an area covered by the financial guarantee:

(1) Send written notification by certified mail, return receipt requested, to the operator or mining claimant that provided the financial guarantee, and the surety on the financial guarantee, if any, and the State agency holding the financial guarantee, if any, informing them of the decision to require the forfeiture of all or part of the financial guarantee. The notification must include the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements for the area or portion of the area affected, including the administrative costs of the Bureau of Land Management.

(2) In the written notification, advise the operator or mining claimant and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to——

(i) Written agreement by the operator, mining claimant, or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the notice or decision approving a plan of operations and the reclamation plan, and a demonstration that such party has the ability to satisfy the conditions; or

(ii) Written permission from the authorized officer to a surety to complete the reclamation, or the portion of the reclamation applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in a notice or approved plan of operations.

(o) In the event the operator or mining claimant fails to meet the requirements of the written notification provided under paragraph (n) of this section, the authorized officer will—

(1) Proceed immediately to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if an appeal has not been filed under § 3809.4, or if such appeal is filed and the decision appealed is confirmed.

(2) Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof, on the area or portion of the area to which bond coverage applies.

(p)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator or mining claimant is liable for the remaining costs. The authorized officer may complete or authorize completion of reclamation of the bonded area and may recover from the operator or mining claimant all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of financial guarantee forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned, within a reasonable amount of time, by the authorized officer to the party from whom they were collected.

(q) When a mining claim is patented, the authorized officer will release the operator or mining claimant from the portion of the financial guarantee that applies to operations within the boundaries of the patented land. The authorized officer shall release the operator or mining claimant from the remainder of the financial guarantee, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator or mining claimant has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands, shall continue to be regulated under the approved plan and shall include a financial guarantee. The provisions of this paragraph do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6).

6. Section 3809.3–1 is amended by revising paragraph (b) to read as follows:

§ 3809.3–1 Applicability of State law.

* * * * *

(b) Each State Director will publish a notice identifying all legal financial guarantees that may be accepted by any authorized officer under his or her jurisdiction, after consultation with the appropriate State authorities to determine which of the financial instruments in § 3809.1–9(k) are allowable under State law to satisfy the financial assurance requirements relating to the reclamation requirements of that State. This list will be updated annually.

* * * * *

7. Section 3809.3–2 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

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§ 3809.3–2 Noncompliance.

* * * * *

(e) An operator or mining claimant who compiles a record of noncompliance is one who has been served with a notice of noncompliance, whose response period has passed, and who has not commenced the actions required by the authorized officer within the time frames set forth in the notice of noncompliance. An operator or mining claimant with a record of noncompliance will continue in noncompliance status until the actions required in the notice of noncompliance have been completed. Any operator or mining claimant with a record of noncompliance must submit a plan of operations within 30 days under § 3809.1–9 of this subpart for all existing and subsequent operations that would otherwise be conducted pursuant to a notice under § 3809.1–3 of this subpart. Operators or mining claimants with a record of noncompliance will be required to post financial guarantees with the authorized officer under § 3809.1–9 within 90 days after notification for all existing disturbance for which said operators or mining claimants are responsible. Failure to post such financial guarantees within the prescribed 90 days will result in the withdrawal of approval of all existing plans of operation, except that the authorized officer may approve actions proposed by an operator with a record of noncompliance to resolve the cause of the noncompliance or to protect public safety or health or prevent further unnecessary or undue environmental degradation. Financial guarantees held by a State will not be acceptable for purposes of this section, and the calculation must be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State in which the activities are proposed, and agreed to by the authorized officer. The requirements of this paragraph continue in force until the operator or mining claimant has come into and remained in compliance with them and the regulations of this subpart for a period of not less than 1 calendar year but not more than 3 calendar years. The duration of the requirement will be determined by the State Director.

(f)(1) Any person constituting an operator, mining claimant, or its authorized agent, who knowingly and willfully violates any provision of this subpart is subject to arrest and trial by a United States magistrate and, if convicted, shall be subject to a fine of not more than $100,000, or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned for no more than twelve months, or both.

(2) Any organization constituting an operator, mining claimant, or its authorized agent, that knowingly and willfully violates any provision of this subpart is subject to criminal prosecution and, if convicted, shall be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

[FR Doc. 97–5016 Filed 2–27–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–6; FCC 96–56]

Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules

AGENCY: Federal Communications Commission.

ACTION: Further memorandum opinion and order on reconsideration.

SUMMARY: In this *Memorandum Opinion and Order on Reconsideration*, the Commission denies the petitions for reconsideration and petitions for partial reconsideration of the Commission's *Third Report and Order and Memorandum Opinion and Order on Reconsideration* 57 FR 53446, November 10, 1992 in this Docket.

FOR FURTHER INFORMATION CONTACT: Ramona Melson, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–7240.

SUPPLEMENTARY INFORMATION: This *Further Memorandum Opinion and Order on Reconsideration* in CC Docket No. 90–6, adopted on February 13, 1996 and released on January 31, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street N.W, Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. Synopsis of *Further Memorandum Opinion and Order on Reconsideration*

I. Introduction

1. By these actions, we respond to petitions for reconsideration and partial reconsideration of the *Third Report and Order on Reconsideration and Memorandum Opinion and Order on Reconsideration* 58 FR 27213, May 7, 1993 in this docket. Applicants Against Lottery Abuses (AALA) and the Committee for Effective Cellular Rules (CECR) have filed petitions for reconsideration of the *Third Report and Order*, 58 FR 27213, May 7, 1993 and Cellular Information Systems, Inc., Debtor in Possession (CIS), has filed a petition for partial reconsideration (CIS Petition) of the *Third Report and Order* 58 FR 27213, May 7, 1993. In addition, we have before us five petitions for reconsideration and three petitions for partial reconsideration of our *Memorandum Opinion and Order on Reconsideration* 58 FR 11799, March 1, 1993. We also received a request by PetroCom and Coastel for expedited action on the CIS petition (PetroCom/Coastel Request). For the reasons stated below, we deny the requests for reconsideration and partial reconsideration of the *Third Report and Order and the Memorandum Opinion and Order* 58 FR 27213, May 7, 1993. We dismiss the request for expedited action as moot.

2. As a related matter, we note that PetroCom and Coastel (collectively, "petitioners") filed petitions for review with the United States Court of Appeals for the District of Columbia Circuit challenging Sections 22.903(a) and 22.903(d)(1) of the Commission's rules. Petitioners contend, inter alia, that the Commission promulgated a consent requirement for de minimis extensions under Section 22.903(d)(1) without providing proper notice and opportunity for comment as required under the Administrative Procedure Act (APA), 5 U.S.C. § 553. On May 13, 1994, the court denied the petition with respect to petitioners' claim that proper notice and comment was not provided because another party, CIS, had already filed a petition for reconsideration with the Commission alleging similar violations and the petition had not yet been resolved. This *Further Memorandum Opinion and Order* addresses the notice and comment issues raised by the CIS petition and the comments filed by petitioners in support of the CIS petition. Other issues raised by petitioners and the court will be addressed in separate orders.

II. Background

3. The first licensee of a cellular radio system authorized on a channel block in

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