PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

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Authority: 16 U.S.C. 3101 *et seq.* ; 30 U.S.C. 22–42, 181 *et seq.* , 301–306, 351–359, and 601 *et seq.* ; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.* ; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.* ; and Pub. L. No. 97–35, 95 Stat. 357.

Source: 45 FR 13974, Mar. 3, 1980, unless otherwise noted.

Subpart 3800—General

§ 3800.5 Fees.

(a) An applicant for a plan of operations under this part must pay a processing fee on a case-by-case basis as described in §3000.11 of this chapter whenever BLM determines that consideration of the plan of operations requires the preparation of an Environmental Impact Statement.
(b) An applicant for any action for which a mineral examination, including a validity examination or a common variety determination, and their associated reports, is performed under §3809.100 or §3809.101 of this part must pay a processing fee on a case-by-case basis as described in section 3000.11 of this chapter for such examination and report.
(c) An applicant for a mineral patent under part 3860 of this chapter must pay a processing fee on a case-by-case basis as described in §3000.11 of this chapter for any validity examination and report prepared in connection with the application.
(d) An applicant for a mineral patent also is required to pay a processing fee under §3860.1 of this chapter.
[70 FR 58878, Oct. 7, 2005]

§ 3800.6 Am I required to pay any fees to use the surface of public lands for mining purposes?

You must pay all processing fees, location fees, and maintenance fees specified in 43 CFR parts 3800 and 3830. Other than the processing, location and maintenance fees, you are not required to pay any other fees to the BLM to use the surface of public lands for mining purposes.
[73 FR 73794, Dec. 4, 2008]

Subpart 3802—Exploration and Mining, Wilderness Review Program

§ 3802.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of lands under wilderness review for inclusion in the wilderness system and to prevent unnecessary or undue degradation by activities authorized by the U.S. Mining Laws and provide for environmental protection of the public lands and resources.

§ 3802.0-2 Objectives.

The objectives of this subpart are to:

(a) Allow mining claim location, prospecting, and mining operations in lands under wilderness review pursuant to the U.S Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system unless otherwise permitted by law; and
(b) Assure management programs that reflect consistency between the U.S. Mining Laws, and other appropriate statutes.

§ 3802.0-3 Authority.

These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0-5 Definitions.

As used in this subpart, the term:
(a) *Reclamation,* which shall be commenced, conducted and completed as soon after disturbance as feasible without undue physical interference with mining operations, means:
(1) Reshaping of the lands disturbed and affected by mining operations to the approximate original contour or to an appropriate contour considering the surrounding topography as determined by the authorized officer;
(2) Restoring such reshaped lands by replacement of topsoil; and
(3) Revegetating the lands by using species previously occurring in the area to provide a vegetative cover at least to the point where natural succession is occuring.
(b) *Environment* means surface and subsurface resources both tangible and intangible, including air, water, mineral, scenic, cultural, paleontological, vegetative, soil, wildlife, fish and wilderness values.
(c) *Wilderness Study Area* means a roadless area of 5,000 acres or more or roadless islands which have been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.
(d) *Impairment of suitability for inclusion in the Wilderness System* means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.
(e) *Mining claim* means any unpatented mining claim, millsite, or tunnel site authorized by the U.S. mining laws.
(f) *Mining operations* means all functions, work, facilities, and activities in connection with the prospecting, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of means of access to and across lands subject to these regulations, whether the operations take place on or off the claim.
(g) *Operator* means a person conducting or proposing to conduct mining operations.
(h) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.
(i) *Wilderness inventory* means an evaluation conducted under BLM wilderness inventory procedures which results in a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.
(j) *Manner and degree* means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular, claim or lease, and in some cases a change in the kind of activity if the impacts from the continuation and chahge of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded in an area or progress to the next stage of development so long as the

additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.
(k) *Valid existing right* means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.
(l) *Undue and unnecessary degradation* means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.
(m) *Substantially unnoticeable* means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0-7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.
(b) These regulations apply to means of access across public land for the purpose of conducting operations under the U.S. mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1-1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:
(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;
(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;
(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;
(d) Any operations using motorized vehicles over other than *open use areas and trails* as defined in subpart 6292 of this title, *off-road vehicles,* unless the use of a motorized vehicle can be covered by a temporory use permit issued under part 2930 of this chapter;
(e) The construction or placing of any mobile, portable or fixed structure on public land for more than 30 days;
(f) On mining operations requiring the use of explosives; or
(g) Any operation which may cause changes in a water course.
[45 FR 13974, Mar. 3, 1980, as amended at 67 FR 61745, Oct. 1, 2002]

§ 3802.1-2 When not required.

A plan of operations under this subpart is not required for—
(a) Searching for and occasionally removing mineral samples or specimens;
(b) Operating motorized vehicles over *open use areas and trails* as defined in 43 CFR part 8340 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;
(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size or character of such facilities; or
(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1-3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 21, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of §3802.1–5 of this title.

§ 3802.1-4 Contents of plan of operations.

(a) A plan of operations shall be filed in the District Office of the Bureau of Land Management in which the claim is located.
(b) No special form is required to file a plan of operations.
(c) The plan of operations shall include—
(1) The name and mailing address of both the person for whom the operation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);
(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;
(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities;
(4) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation used or to be used, and the estimated period during which the proposed activity will take place;
(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to subpart 3833 of this title.

§ 3802.1-5 Plan approval.

(a) The authorized officer shall promptly acknowledge the receipt of a plan of operations and within 30 days of receipt of the plan act on the plan of operations to determine its acceptability.
(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in §3802.3 of this title. After completing the review of the plan of operations, the authorized officer shall give the operator written notice that:
(1) The plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer;
(2) Plans covering operations on a claim with a valid existing right are approved subject to measures that will prevent undue and unnecessary degradation of the area; or

(3) The anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.
(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator, in writing, that:
(1) In an area of lands under wilderness review where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in a wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed;
(2) The area has been inventoried and a final decision has been issued and become effective that the area does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or
(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.
(d) In addition to paragraphs (a) through (c) of this section, the following general plan approval procedures may also apply. The authorized officer may notify the operator, in writing, that:
(1) The plan of operations is unacceptable and the reasons therefore;
(2) Modification of the plan of operations is necessary to meet the requirements of these regulations;
(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed except in those instances where it is determined that an Environmental Impact Statement, compliance with section 106 of the National Historic Preservation Act (NHPA) or section 7 of the Endangered Species Act is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period; or
(4) The proposed operations do not require a plan of operations.
(e) If the authorized officer does not notify the operator of any action on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Impact Statement or compliance with section 106 of NHPA or section 7 of the Endangered Species Act, operations under the plan may begin. The option to begin operations under this section does not constitute approval of a plan of operations. However, if the authorized officer at a later date finds that operations under the plan are impairing wilderness suitability, the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Impact Statement, the plan of operations shall not be approved before 30 days after a final statement is prepared and filed with the Environmental Protection Agency. If the is operator notified of the need for compliance with section 106 of the NHPA or section 7 of the Endangered Species Act, the plan of operations shall not be approved until the compliance responsibilities of the Bureau of Land Management are satisfied.
(f) If cultural resource properties listed on or eligible for listing on the National Register of Historic Places are within the area of operations, no operations which would affect those resources shall be approved until compliance with section 106 of the National Historic Preservation Act is accomplished. The operator is not required to do or to pay for an inventory. The responsibility and cost of the cultural resource mitigation, except as provided in §3802.3–2(f) of this title, included in an approved plan of operation shall be the operator's.
(g) Pending final approval of the plan of operations, the authorized officer may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in §3802.3 of this title.

§ 3802.1-6 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth this proposed operation to the degree reasonably foreseeable at that time. Thereafter, the

operator shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.
(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under §3802.1–5(e) of this title, the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in §3802.3–2 of this title, and (3) whether the disturbance can be minimized using reasonable means. Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.
(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations.

§ 3802.1-7 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under §3802.1–1 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.
(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.
(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

§ 3802.2 Bond requirements.

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing and reclaiming all areas disturbed by the operations consistent with §3802.3–2(h) of this title.
(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.
(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.
(d) In the event that an approved plan of operations is modified in accordance with §3802.1–5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.
(e) When a mining claim is patented, except for the California Desert Conservation Area, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the

operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with paragraph (f) of this section or those requirements are waived by the authorized officer.
(f) When all or any portion of the reclamation has been completed in accordance with paragraph (h) of §3802.3–2 of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation.

§ 3802.3 Environmental protection.
§ 3802.3-1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impacts of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness or cause unnecessary and undue degradation and whether an environmental impact statement is required.
(b) Following completion of the environmental assessment or the environmental impact statement, the authorized officer shall develop measures deemed necessary for inclusion in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.
(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, the operator may be notified that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in §3802.1–4 of this title except as provided for cases requiring an environmental impact statement, a cultural resource inventory or section 7 of the Endangered Species Act.

§ 3802.3-2 Requirements for environmental protection.

(a) *Air quality.* The operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 *et seq.*).
(b) *Water quality.* The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 *et seq*).
(c) *Solid wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials of substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment, surface and subsurface resources.
(d) *Visual resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.
(e) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to minimize or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.
(f) *Cultural and paleontological resources.* (1) The operator shall not knowingly disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.
(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered or destroyed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within 10 working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such values discovered during approved operations shall be the Federal Government's.
(g) *Access routes.* No new access routes that would cause more than temporary impact and therefore would impair wilderness suitability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, dips, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stabilized and revegetated as required in the plan of operations.
(h) *Reclamation.* (1) The operator shall perform reclamation of those lands disturbed or affected by the mining operation conducted by the operator under an approved plan of operations containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.
(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.
(i) *Protection of survey monuments.* The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

§ 3802.4 General provisions.
§ 3802.4-1 Noncompliance.

(a) An operator who conducts mining operations undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.
(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing impairment of wilderness suitability or unnecessary and undue degradation of the resources of the lands involved, the authorized officer shall serve a notice of noncompliance upon the operator by delivery in person to the operator or the operator's authorized agent, or by certified mail addressed to the operator's last known address.
(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations of the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, not to exceed 30 days, within which corrective action shall be taken.

§ 3802.4-2 Access.

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.
(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access route. The authorized officer may also require the operator to utilize existing access routes in order to minimize the number of separate rights-of-way, and, if practicable, to construct access routes within a designated transportation and utility

corridor. When commercial hauling is involved and the use of an existing access route is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3802.4-3 Multiple-use conflicts.

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts shall be reconciled, as much as practicable, by the authorized officer.

§ 3802.4-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3802.4-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3802.4-6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4-7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days after such suspension. This notice shall include:
(1) Verification of intent to maintain structures, equipment, and other facilities, and
(2) The expected reopening date.
(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.
(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4-8 Cessation of operations.

The operator shall, within 1 year following cessation of operations, remove all structures, equipment, and other facilities and reclaim the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.
(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) All data and information concerning Federal and Indian minerals submitted under this subpart 3802 are subject to part 2 of this title. Part 2 of this title includes the regulations of the Department of the Interior covering the public disclosure of data and information contained in Department of the Interior records. Certain mineral information not protected from public disclosure under part 2 may of this title be made available for inspection without a Freedom of Information Act (5 U.S.C. 552) request.
(b) When you submit data and information under this subpart 3802 that you believe to be exempt from disclosure to the public, you must clearly mark each page that you believe includes confidential information. BLM will keep all data and information confidential to the extent allowed by §2.13(c) of this title.
[63 FR 52954, Oct. 1, 1998]

Subpart 3809—Surface Management

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

Source: 65 FR 70112, Nov. 21, 2000, unless otherwise noted.

General Information

§ 3809.1 What are the purposes of this subpart?

The purposes of this subpart are to:
(a) Prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws. Anyone intending to develop mineral resources on the public lands must prevent unnecessary or undue degradation of the land and reclaim disturbed areas. This subpart establishes procedures and standards to ensure that operators and mining claimants meet this responsibility; and
(b) Provide for maximum possible coordination with appropriate State agencies to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands.

§ 3809.2 What is the scope of this subpart?

(a) This subpart applies to all operations authorized by the mining laws on public lands where the mineral interest is reserved to the United States, including Stock Raising Homestead lands as provided in §3809.31(d) and (e). When public lands are sold or exchanged under 43 U.S.C. 682(b) (Small Tracts Act), 43 U.S.C. 869 (Recreation and Public Purposes Act), 43 U.S.C. 1713 (sales) or 43 U.S.C. 1716 (exchanges), minerals reserved to the United States continue to be removed from the operation of the mining laws unless a subsequent land-use planning decision expressly restores the land to mineral entry, and BLM publishes a notice to inform the public.
(b) This subpart does not apply to lands in the National Park System, National Forest System, and the National Wildlife Refuge System; acquired lands; or lands administered by BLM that are under wilderness review, which are subject to subpart 3802 of this part.
(c) This subpart applies to all patents issued after October 21, 1976 for mining claims in the California Desert Conservation Area, except for any patent for which a right to the patent vested before that date.
(d) This subpart does not apply to private land except as provided in paragraphs (a) and (c) of this section. For purposes of analysis under the National Environmental Policy Act of 1969, BLM may collect information about private land that is near to, or may be affected by, operations authorized under this subpart.
(e) This subpart applies to operations that involve locatable minerals, including metallic minerals; some industrial minerals, such as gypsum; and a number of other non-metallic minerals that have a unique property which gives the deposit a distinct and special value. This subpart does not apply to leasable and salable minerals. Leasable minerals, such as coal, phosphate, sodium, and potassium; and salable minerals, such as common varieties of sand, gravel, stone, and pumice, are not subject to location under the mining laws. Parts 3400, 3500 and 3600 of this title govern mining operations for leasable and salable minerals.

[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

§ 3809.3 What rules must I follow if State law conflicts with this subpart?

If State laws or regulations conflict with this subpart regarding operations on public lands, you must follow the requirements of this subpart. However, there is no conflict if the State law or regulation requires a higher standard of protection for public lands than this subpart.

§ 3809.5 How does BLM define certain terms used in this subpart?

As used in this subpart, the term:
Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands or resources. For example—
(1) Casual use generally includes the collection of geochemical, rock, soil, or mineral specimens using hand tools; hand panning; or non-motorized sluicing. It may include use of small portable suction dredges. It also generally includes use of metal detectors, gold spears and other battery-operated devices for sensing the presence of minerals, and hand and battery-operated drywashers. Operators may use motorized vehicles for casual use activities provided the use is consistent with the regulations governing such use (part 8340 of this title), off-road vehicle use designations contained in BLM land-use plans, and the terms of temporary closures ordered by BLM.
(2) Casual use does not include use of mechanized earth-moving equipment, truck-mounted drilling equipment, motorized vehicles in areas when designated as closed to "off-road vehicles" as defined in §8340.0–5 of this title, chemicals, or explosives. It also does not include "occupancy" as defined in §3715.0–5 of this title or operations in areas where the cumulative effects of the activities result in more than negligible disturbance.
Exploration means creating surface disturbance greater than casual use that includes sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present. Exploration does not include activities where material is extracted for commercial use or sale.
Minimize means to reduce the adverse impact of an operation to the lowest practical level. During review of operations, BLM may determine that it is practical to avoid or eliminate particular impacts.
Mining claim means any unpatented mining claim, millsite, or tunnel site located under the mining laws. The term also applies to those mining claims and millsites located in the California Desert Conservation Area that were patented after the enactment of the Federal Land Policy and Management Act of October 21, 1976. Mining "claimant" is defined in §3833.0–5 of this title.
Mining laws means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); as well as all laws supplementing and amending those laws, including the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); the Saline Placer Act of January 31, 1901 (31 Stat. 745); the Surface Resources Act of 1955 (30 U.S.C. 611–614); and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).
Mitigation, as defined in 40 CFR 1508.20, may include one or more of the following:
(1) Avoiding the impact altogether by not taking a certain action or parts of an action;
(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
(5) Compensating for the impact by replacing, or providing substitute, resources or environments.
Operations means all functions, work, facilities, and activities on public lands in connection with prospecting, exploration, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws; reclamation of disturbed areas; and all other reasonably incident uses, whether on a mining claim or not, including the construction of roads, transmission lines, pipelines, and other means of access across public lands for support facilities.
Operator means a person conducting or proposing to conduct operations.
Person means any individual, firm, corporation, association, partnership, trust, consortium, joint venture, or any other entity conducting operations on public lands.

Project area means the area of land upon which the operator conducts operations, including the area required for construction or maintenance of roads, transmission lines, pipelines, or other means of access by the operator.
Public lands, as defined in 43 U.S.C. 1702, means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM, without regard to how the United States acquired ownership, except—
(1) Lands located on the Outer Continental Shelf; and
(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.
Reclamation means taking measures required by this subpart following disturbance of public lands caused by operations to meet applicable performance standards and achieve conditions required by BLM at the conclusion of operations. For a definition of "reclamation" applicable to operations conducted under the mining laws on Stock Raising Homestead Act lands, see part 3810, subpart 3814 of this title. Components of reclamation include, where applicable:
(1) Isolation, control, or removal of acid-forming, toxic, or deleterious substances;
(2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;
(3) Rehabilitation of fisheries or wildlife habitat;
(4) Placement of growth medium and establishment of self-sustaining revegetation;
(5) Removal or stabilization of buildings, structures, or other support facilities;
(6) Plugging of drill holes and closure of underground workings; and
(7) Providing for post-mining monitoring, maintenance, or treatment.
Riparian area is a form of wetland transition between permanently saturated wetlands and upland areas. These areas exhibit vegetation or physical characteristics reflective of permanent surface or subsurface water influence. Typical riparian areas include lands along, adjacent to, or contiguous with perennially and intermittently flowing rivers and streams, glacial potholes, and the shores of lakes and reservoirs with stable water levels. Excluded are areas such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.
Tribe means, and *Tribal* refers to, a Federally recognized Indian tribe.
Unnecessary or undue degradation means conditions, activities, or practices that:
(1) Fail to comply with one or more of the following: the performance standards in §3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;
(2) Are not "reasonably incident" to prospecting, mining, or processing operations as defined in §3715. 0–5 of this chapter; or
(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

§ 3809.10 How does BLM classify operations?

BLM classifies operations as—
(a) Casual use, for which an operator need not notify BLM. (You must reclaim any casual-use disturbance that you create. If your operations do not qualify as casual use, you must submit a notice or plan of operations, whichever is applicable. See §§3809.11 and 3809.21.);
(b) Notice-level operations, for which an operator must submit a notice (except for certain suction-dredging operations covered by §3809.31(b)); and
(c) Plan-level operations, for which an operator must submit a plan of operations and obtain BLM's approval.

§ 3809.11 When do I have to submit a plan of operations?

(a) You must submit a plan of operations and obtain BLM's approval before beginning operations greater than casual use, except as described in §3809.21. Also see §§3809.31 and 3809.400 through 3809.434.
(b) You must submit a plan of operations for any bulk sampling in which you will remove 1,000 tons or more of presumed ore for testing.

(c) You must submit a plan of operations for any operations causing surface disturbance greater than casual use in the following special status areas where §3809.21 does not apply:
(1) Lands in the California Desert Conservation Area (CDCA) designated by the CDCA plan as "controlled" or "limited" use areas;
(2) Areas in the National Wild and Scenic Rivers System, and areas designated for potential addition to the system;
(3) Designated Areas of Critical Environmental Concern;
(4) Areas designated as part of the National Wilderness Preservation System and administered by BLM;
(5) Areas designated as "closed" to off-road vehicle use, as defined in §8340.0–5 of this title;
(6) Any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, unless BLM allows for other action under a formal land-use plan or threatened or endangered species recovery plan; and
(7) National Monuments and National Conservation Areas administered by BLM.

§ 3809.21 When do I have to submit a notice?

(a) You must submit a complete notice of your operations 15 calendar days before you commence exploration causing surface disturbance of 5 acres or less of public lands on which reclamation has not been completed. See §3809.301 for information on what you must include in your notice.
(b) You must not segment a project area by filing a series of notices for the purpose of avoiding filing a plan of operations. See §§3809.300 through 3809.336 for regulations applicable to notice-level operations.

§ 3809.31 Are there any special situations that affect what submittals I must make before I conduct operations?

(a) Where the cumulative effects of casual use by individuals or groups have resulted in, or are reasonably expected to result in, more than negligible disturbance, the State Director may establish specific areas as he/she deems necessary where any individual or group intending to conduct activities under the mining laws must contact BLM 15 calendar days before beginning activities to determine whether the individual or group must submit a notice or plan of operations. (See §3809.300 through 3809.336 and §3809.400 through 3809.434.) BLM will notify the public via publication in the Federal Register of the boundaries of such specific areas, as well as through posting in each local BLM office having jurisdiction over the lands.
(b) *Suction dredges.* (1) If your operations involve the use of a suction dredge, the State requires an authorization for its use, and BLM and the State have an agreement under §3809.200 addressing suction dredging, then you need not submit to BLM a notice or plan of operations, unless otherwise provided in the agreement between BLM and the State.
(2) For all uses of a suction dredge not covered by paragraph (b)(1) of this section, you must contact BLM before beginning such use to determine whether you need to submit a notice or a plan to BLM, or whether your activities constitute casual use. If your proposed suction dredging is located within any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, regardless of the level of disturbance, you must not begin operations until BLM completes consultation the Endangered Species Act requires.
(c) If your operations require you to occupy or use a site for activities "reasonably incident" to mining, as defined in §3715.0–5 of this title, whether you are operating under a notice or a plan of operations, you must also comply with part 3710, subpart 3715, of this title.
(d) If your operations are located on lands patented under the Stock Raising Homestead Act and you do not have the written consent of the surface owner, then you must submit a plan of operations and obtain BLM's approval. Where you have surface-owner consent, you do not need a notice or a plan of operations under this subpart. See part 3810, subpart 3814, of this title.
(e) For other than Stock Raising Homestead Act lands, if your proposed operations are located on lands conveyed by the United States which contain minerals reserved to the United States, then you must submit a plan of operations under §3809.11 and obtain BLM's approval or a notice under §3809.21.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

§ 3809.100 What special provisions apply to operations on segregated or withdrawn lands?

(a) *Mineral examination report.* After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid. BLM may require preparation of a mineral examination report before approving a plan of operations or allowing notice-level operations to proceed on segregated lands. If the report concludes that the mining claim is invalid, BLM will not approve operations or allow notice-level operations on the mining claim. BLM will also promptly initiate contest proceedings.
(b) *Allowable operations.* If BLM has not completed the mineral examination report under paragraph (a) of this section, if the mineral examination report for proposed operations concludes that a mining claim is invalid, or if there is a pending contest proceeding for the mining claim,
(1) BLM may—
(i) Approve a plan of operations for the disputed mining claim proposing operations that are limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier; and
(ii) Approve a plan of operations for the operator to perform the minimum necessary annual assessment work under §3851.1 of this title; or
(2) A person may only conduct exploration under a notice that is limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier.
(c) *Time limits.* While BLM prepares a mineral examination report under paragraph (a) of this section, it may suspend the time limit for responding to a notice or acting on a plan of operations. See §§3809.311 and 3809.411, respectively.
(d) *Final decision.* If a final departmental decision declares a mining claim to be null and void, the operator must cease all operations, except required reclamation.

§ 3809.101 What special provisions apply to minerals that may be common variety minerals, such as sand, gravel, and building stone?

(a) *Mineral examination report.* On mining claims located on or after July 23, 1955, you must not initiate operations for minerals that may be "common variety" minerals, as defined in §3711.1(b) of this title, until BLM has prepared a mineral examination report, except as provided in paragraph (b) of this section.
(b) *Interim authorization.* Until the mineral examination report described in paragraph (a) of this section is prepared, BLM will allow notice-level operations or approve a plan of operations for the disputed mining claim for—
(1) Operations limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim;
(2) Performance of the minimum necessary annual assessment work under §3851.1 of this title; or
(3) Operations to remove possible common variety minerals if you establish an escrow account in a form acceptable to BLM. You must make regular payments to the escrow account for the appraised value of possible common variety minerals removed under a payment schedule approved by BLM. The funds in the escrow account must not be disbursed to the operator or to the U.S. Treasury until a final determination of whether the mineral is a common variety and therefore salable under part 3600 of this title.
(c) *Determination of common variety.* If the mineral examination report under paragraph (a) of this section concludes that the minerals are common variety minerals, you may either relinquish your mining claim(s) or BLM will initiate contest proceedings. Upon relinquishment or final departmental determination that the mining claim(s) is null and void, you must promptly close and reclaim your operations unless you are authorized to proceed under parts 3600 and 3610 of this title.
(d) *Disposal.* BLM may dispose of common variety minerals from unpatented mining claims in accordance with the provisions of §3601.14 of this chapter.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 58910, Nov. 23, 2001]

§ 3809.111 Will BLM disclose to the public the information I submit under this subpart?

Part 2 of this title applies to all information and data you submit under this subpart. If you submit information or data under this subpart that you believe is exempt from disclosure, you must mark each page clearly "CONFIDENTIAL INFORMATION." You must also separate it from other materials you submit to BLM. BLM will keep confidential information or data marked in this manner to the extent required by part 2 of this title. If you do not mark the information as confidential, BLM, without notifying you, may disclose the information to the public to the full extent allowed under part 2 of this title.

§ 3809.115 Can BLM collect information under this subpart?

Yes, the Office of Management and Budget has approved the collections of information contained in this subpart under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0194. BLM will use this information to regulate and monitor mining and exploration operations on public lands.

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a) Mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests.
(b) Relinquishment, forfeiture, or abandonment of a mining claim does not relieve a mining claimant's or operator's responsibility under this subpart for obligations that accrued or conditions that were created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area.
(c) Transfer of a mining claim or operation does not relieve a mining claimant's or operator's responsibility under this subpart for obligations that accrued or conditions that were created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area until—
(1) BLM receives documentation that a transferee accepts responsibility for the transferor's previously accrued obligations, and
(2) BLM accepts an adequate replacement financial guarantee adequate to cover such previously accrued obligations and the transferee's new obligations.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

Federal/State Agreements

§ 3809.200 What kinds of agreements may BLM and a State make under this subpart?

To prevent unnecessary administrative delay and to avoid duplication of administration and enforcement, BLM and a State may make the following kinds of agreements:
(a) An agreement to provide for a joint Federal/State program; and
(b) An agreement under §3809.202 which provides that, in place of BLM administration, BLM defers to State administration of some or all of the requirements of this subpart subject to the limitations in §3809.203.

§ 3809.201 What should these agreements address?

(a) The agreements should provide for maximum possible coordination with the State to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands. Agreements should cover any or all sections of this subpart and should consider, at a minimum, common approaches to review of plans of operations, including effective cooperation regarding the National Environmental Policy Act; performance standards; interim management of temporary closure; financial guarantees; inspections; and enforcement actions, including referrals to enforcement authorities. BLM and the State should also include provisions for the regular review or audit of these agreements.
(b) To satisfy the requirements of §3809.31(b), if BLM and the State elect to address suction dredge activities in the agreement, the agreement must require a State to notify BLM of each application to conduct suction dredge activities within 15 calendar days of receipt of the application by the State. BLM will inform the State whether Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat may be affected by the proposed activities and any necessary

mitigating measures. Operations must not begin until BLM completes consultation or conferencing under the Endangered Species Act.

§ 3809.202 Under what conditions will BLM defer to State regulation of operations?

(a) *State request.* A State may request BLM enter into an agreement for State regulation of operations on public lands in place of BLM administration of some or all of the requirements of this subpart. The State must send the request to the BLM State Director with jurisdiction over public lands in the State.
(b) *BLM review.* (1) When the State Director receives the State's request, he/she will notify the public and provide an opportunity for comment. The State Director will then review the request and determine whether the State's requirements are consistent with the requirements of this subpart, and whether the State has necessary legal authorities, resources, and funding for an agreement. The State requirements may be contained in laws, regulations, guidelines, policy manuals, and demonstrated permitting practices.
(2) For the purposes of this subpart, BLM will determine consistency with the requirements of this subpart by comparing this subpart and State standards on a provision-by-provision basis to determine—
(i) Whether non-numerical State standards are functionally equivalent to BLM counterparts; and
(ii) Whether numerical State standards are the same as corresponding numerical BLM standards, except that State review and approval time frames do not have to be the same as the corresponding Federal time frames.
(3) A State environmental protection standard that exceeds a corresponding Federal standard is consistent with the requirements of this subpart.
(c) *State Director decision.* The BLM State Director will notify the State in writing of his/her decision regarding the State's request. The State Director will address whether the State requirements are consistent with the requirements of this subpart, and whether the State has necessary legal authorities, resources, and funding to implement any agreement. If BLM determines that the State's requirements are consistent with the requirements of this subpart and the State has the necessary legal authorities, resources, and funding, BLM must enter into an agreement with the State so that the State will regulate some or all of the operations on public lands, as described in the State request.
(d) Appeal of State Director decision. The BLM State Director's decision will be a final decision of BLM and may be appealed to the Assistant Secretary for Land and Minerals Management, but not to the Department of the Interior Office of Hearings and Appeals. The items you should include in the appeal are the same as the items you must include under §3809.802.
[65 FR 70112, Nov. 21, 2000, as amended at 68 FR 32656, June 2, 2003]

§ 3809.203 What are the limitations on BLM deferral to State regulation of operations?

Any agreement between BLM and a State in which BLM defers to State regulation of some or all operations on public lands is subject to the following limitations:
(a) *Plans of Operations.* BLM must concur with each State decision approving a plan of operations to assure compliance with this subpart, and BLM retains responsibility for compliance with the National Environmental Policy Act (NEPA). The State and BLM may decide who will be the lead agency in the plan review process, including preparation of NEPA documents.
(b) *Federal land-use planning and other Federal laws.* BLM will continue to be responsible for all land-use planning on public lands and for implementing other Federal laws relating to the public lands for which BLM is responsible.
(c) *Federal enforcement.* BLM may take any authorized action to enforce the requirements of this subpart or any term, condition, or limitation of a notice or an approved plan of operations. BLM may take this action regardless of the nature of its agreement with a State, or actions taken by a State.
(d) *Financial guarantee.* The amount of the financial guarantee must be calculated based on the completion of both Federal and State reclamation requirements, but may be held as one instrument. If the financial guarantee is held as one instrument, it must be redeemable by both the Secretary and the State. BLM must concur in the approval, release, or forfeiture of a financial guarantee for public lands.
(e) *State performance.* If BLM determines that a State is not in compliance with all or part of its Federal/State agreement, BLM will notify the State and provide a reasonable time for the State to comply.
(f) *Termination.* (1) If a State does not comply after being notified under paragraph (e) of this section, BLM will take appropriate action, which may include termination of all or part of the agreement.

(2) A State may terminate its agreement by notifying BLM 60 calendar days in advance.

§ 3809.204 Does this subpart cancel an existing agreement between BLM and a State?

(a) No, this subpart doesn't cancel a Federal/State agreement or memorandum of understanding in effect on January 20, 2001. A Federal/State agreement or memorandum of understanding will continue while BLM and the State perform a review to determine whether revisions are required under this subpart. BLM and the State must complete the review and make necessary revisions no later than one year from January 20, 2001.
(b) The BLM State Director may extend the review period described in paragraph (a) of this section for one more year upon the written request of the Governor of the State or the delegated representative of the Governor, and if necessary, for a third year upon another written request. The existing agreement or memorandum of understanding terminates no later than one year after January 20, 2001 if this review and any necessary revision does not occur, unless extended under this paragraph.
(c) This subpart applies during the review period described in paragraphs (a) and (b) of this section. Where a portion of a Federal/State agreement or memorandum of understanding existing on January 20, 2001 is inconsistent with this subpart, that portion continues in effect until the agreement or memorandum of understanding is revised under this subpart or terminated.

Operations Conducted Under Notices

§ 3809.300 Does this subpart apply to my existing notice-level operations?

To see how this subpart applies to your operations conducted under a notice and existing on January 20, 2001, follow this table:

If BLM has received your complete notice before January 20, 2001—	Then—
(a) You are the operator identified in the notice on file with BLM on January 20, 2001	You may conduct operations for 2 years after January 20, 2001 under the terms of your existing notice and the regulations in effect immediately before that date. (See 43 CFR parts 1000-end, revised as of Oct. 1, 1999.) After 2 years, you may extend your notice under §3809.333. BLM may require a modification under §3809.331(a)(1). See §3809.503 for financial guarantee requirements applicable to notices.
(b) You are a new operator, that is, you were not the operator identified in the notice on file with BLM on January 20, 2001	The provisions of this subpart, including §3809.320, govern your operations for 2 years after January 20, 2001, unless you extend your notice under §3809.333.
(c) You later modify your notice	(1) You may conduct operations on the original acreage for 2 years after January 20, 2001 under the terms of your existing notice and the regulations in effect immediately before that date (See 43 CFR parts 1000-end, revised as of Oct. 1, 2000.) After 2 years, you may extend your notice under §3809.333. BLM may require a modification under §3809.331(a)(1). See §3809.503(b) for financial guarantee requirements applicable to notices.
	(2) Your operations on any additional acreage come under the provisions of this subpart, including §§3809.11 and 3809.21, and may require approval of a plan of operations before the additional surface disturbance may.

(d) Your notice has expired	You may not conduct operations under an expired notice. You must promptly submit either a new notice under §3809.301 or a plan of operations under §3809.401, whichever is applicable, or immediately begin to reclaim your project area. See §§3809.11 and 3809.21.

§ 3809.301 Where do I file my notice and what information must I include in it?

(a) If you qualify under §3809.21, you must file your notice with the local BLM office with jurisdiction over the lands involved. BLM does not require that the notice be on a particular form.
(b) To be complete, your notice must include the following information:
(1) *Operator Information.* The name, mailing address, phone number, taxpayer identification number of the operator(s), and the BLM serial number(s) of any unpatented mining claim(s) where the disturbance would occur. If the operator is a corporation, you must identify one individual as the point of contact;
(2) *Activity Description, Map, and Schedule of Activities.* A description of the proposed activity with a level of detail appropriate to the type, size, and location of the activity. The description must include the following:
(i) The measures that you will take to prevent unnecessary or undue degradation during operations;
(ii) A map showing the location of your project area in sufficient detail for BLM to be able to find it and the location of access routes you intend to use, improve, or construct;
(iii) A description of the type of equipment you intend to use; and
(iv) A schedule of activities, including the date when you expect to begin operations and the date you expect to complete reclamation;
(3) *Reclamation Plan.* A description of how you will complete reclamation to the standards described in §3809.420; and
(4) *Reclamation cost estimate.* An estimate of the cost to fully reclaim your operations as required by §3809.552.
(c) BLM may require you to provide additional information, if necessary to ensure that your operations will comply with this subpart.
(d) You must notify BLM in writing within 30 calendar days of any change of operator or corporate point of contact, or of the mailing address of the operator or corporate point of contact.

§ 3809.311 What action does BLM take when it receives my notice?

(a) Upon receipt of your notice, BLM will review it within 15 calendar days to see if it is complete under §3809.301.
(b) If your notice is incomplete, BLM will inform you in writing of the additional information you must submit. BLM may also take the actions described in §3809.313.
(c) BLM will review your additional information within 15 calendar days to ensure it is complete. BLM will repeat this process until your notice is complete, or until we determine that you may not conduct operations because of your inability to prevent unnecessary or undue degradation.

§ 3809.312 When may I begin operations after filing a complete notice?

(a) If BLM does not take any of the actions described in §3908.313, you may begin operations no sooner than 15 calendar days after the appropriate BLM office receives your complete notice. BLM may send you an acknowledgement that indicates the date we received your notice. If you don't receive an acknowledgement or have any doubt about the date we received your notice, contact the office to which you sent the notice. This subpart does not require BLM to approve your notice or inform you that your notice is complete.
(b) If BLM completes our review sooner than 15 calendar days after receiving your complete notice, we may notify you that you may begin operations.
(c) You must provide to BLM a financial guarantee that meets the requirements of this subpart before beginning operations.

(d) Your operations may be subject to BLM approval under part 3710, subpart 3715, of this title relating to use or occupancy of unpatented mining claims.

§ 3809.313 Under what circumstances may I not begin operations 15 calendar days after filing my notice?

To see when you may not begin operations 15 calendar days after filing your notice, follow this table:

If BLM reviews your notice and, within 15 calendar days—	Then—
(a) Notifies you that BLM needs additional time, not to exceed 15 calendar days, to complete its review	You must not begin operations until the additional review time period ends.
(b) Notifies you that you must modify your notice to prevent unnecessary or undue degradation	You must not begin operations until you modify your notice to ensure that your operations prevent unnecessary or undue degradation.
(c) Requires you to consult with BLM about the location of existing or proposed access routes	You must not begin operations until you consult with BLM and satisfy BLM's concerns about access.
(d) Determines that an on-site visit is necessary	You must not begin operations until BLM visits the site, and you satisfy any concerns arising from the visit. BLM will notify you if we will not conduct the site visit within 15 calendar days of determining that a visit is necessary, including the reason(s) for the delay.
(e) BLM determines you don't qualify under §3809.11 as a notice-level operation	You must file a plan of operations before beginning operations. See §§3809.400 through 3809.420.

§ 3809.320 Which performance standards apply to my notice-level operations?

Your notice-level operations must meet all applicable performance standards of §3809.420.

§ 3809.330 May I modify my notice?

(a) Yes, you may submit a notice modification at any time during operations under a notice.
(b) BLM will review your notice modification the same way it reviewed your initial notice under §§3809.311 and 3809.313.

§ 3809.331 Under what conditions must I modify my notice?

(a) You must modify your notice—
(1) If BLM requires you to do so to prevent unnecessary or undue degradation; or
(2) If you plan to make material changes to your operations. Material changes are changes that disturb areas not described in the existing notice; change your reclamation plan; or result in impacts of a different kind, degree, or extent than those described in the existing notice.

(b) You must submit your notice modification 15 calendar days before making any material changes. If BLM determines your notice modification is complete before the 15-day period has elapsed, BLM may notify you to proceed. When BLM requires you to modify your notice, we may also notify you to proceed before the 15-day period has elapsed to prevent unnecessary or undue degradation.

§ 3809.332 How long does my notice remain in effect?

If you filed your complete notice on or after January 20, 2001, it remains in effect for 2 years, unless extended under §3809.333, or unless you notify BLM beforehand that operations have ceased and reclamation is complete. BLM will conduct an inspection to verify whether you have met your obligations, will notify you promptly in writing, and terminate your notice, if appropriate.

§ 3809.333 May I extend my notice, and, if so, how?

Yes, if you wish to conduct operations for 2 additional years after the expiration date of your notice, you must notify BLM in writing on or before the expiration date and meet the financial guarantee requirements of §3809.503. You may extend your notice more than once.

§ 3809.334 What if I temporarily stop conducting operations under a notice?

(a) If you stop conducting operations for any period of time, you must—
(1) Maintain public lands within the project area, including structures, in a safe and clean condition;
(2) Take all steps necessary to prevent unnecessary or undue degradation; and
(3) Maintain an adequate financial guarantee.
(b) If the period of non-operation is likely to cause unnecessary or undue degradation, BLM, in writing, will—
(1) Require you to take all steps necessary to prevent unnecessary or undue degradation; and
(2) Require you, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment, and other facilities and reclaim the project area.

§ 3809.335 What happens when my notice expires?

(a) When your notice expires, you must—
(1) Cease operations, except reclamation; and
(2) Complete reclamation promptly according to your notice.
(b) Your reclamation obligations continue beyond the expiration or any termination of your notice until you satisfy them.

§ 3809.336 What if I abandon my notice-level operations?

(a) BLM may consider your operations to be abandoned if, for example, you leave inoperable or non-mining related equipment in the project area, remove equipment and facilities from the project area other than for purposes of completing reclamation according to your reclamation plan, do not maintain the project area, discharge local workers, or there is no sign of activity in the project area over time.
(b) If BLM determines that you abandoned your operations without completing reclamation, BLM may initiate forfeiture under §3809.595. If the amount of the financial guarantee is inadequate to cover the cost of reclamation, BLM may complete the reclamation, and the operator and all other responsible persons are liable for the cost of reclamation.

Operations Conducted Under Plans of Operations

§ 3809.400 Does this subpart apply to my existing or pending plan of operations?

(a) You may continue to operate under the terms and conditions of a plan of operations that BLM approved before January 20, 2001. All provisions of this subpart except plan content (§3809.401) and performance standards (§§3809.415 and 3809.420) apply to such plan of operations. See §3809.505 for the applicability of financial guarantee requirements.

(b) If your unapproved plan of operations is pending on January 20, 2001, then the plan content requirements and performance standards that were in effect immediately before that date apply to your pending plan of operations. (See 43 CFR parts 1000–end, revised as of Oct. 1, 1999.) All other provisions of this subpart apply.
(c) If you want this subpart to apply to any existing or pending plan of operations, where not otherwise required, you may choose to have this subpart apply.

§ 3809.401 Where do I file my plan of operations and what information must I include with it?

(a) If you are required to file a plan of operations under §3809.11, you must file it with the local BLM field office with jurisdiction over the lands involved. BLM does not require that the plan be on a particular form. Your plan of operations must demonstrate that the proposed operations would not result in unnecessary or undue degradation of public lands.
(b) Your plan of operations must contain the following information and describe the proposed operations at a level of detail sufficient for BLM to determine that the plan of operations prevents unnecessary or undue degradation:
(1) *Operator Information.* The name, mailing address, phone number, taxpayer identification number of the operator(s), and the BLM serial number(s) of any unpatented mining claim(s) where disturbance would occur. If the operator is a corporation, you must identify one individual as the point of contact. You must notify BLM in writing within 30 calendar days of any change of operator or corporate point of contact or in the mailing address of the operator or corporate point of contact;
(2) *Description of Operations.* A description of the equipment, devices, or practices you propose to use during operations including, where applicable—
(i) Maps of the project area at an appropriate scale showing the location of exploration activities, drill sites, mining activities, processing facilities, waste rock and tailing disposal areas, support facilities, structures, buildings, and access routes;
(ii) Preliminary or conceptual designs, cross sections, and operating plans for mining areas, processing facilities, and waste rock and tailing disposal facilities;
(iii) Water management plans;
(iv) Rock characterization and handling plans;
(v) Quality assurance plans;
(vi) Spill contingency plans;
(vii) A general schedule of operations from start through closure; and
(viii) Plans for all access roads, water supply pipelines, and power or utility services;
(3) *Reclamation Plan.* A plan for reclamation to meet the standards in §3809.420, with a description of the equipment, devices, or practices you propose to use including, where applicable, plans for—
(i) Drill-hole plugging;
(ii) Regrading and reshaping;
(iii) Mine reclamation, including information on the feasibility of pit backfilling that details economic, environmental, and safety factors;
(iv) Riparian mitigation;
(v) Wildlife habitat rehabilitation;
(vi) Topsoil handling;
(vii) Revegetation;
(viii) Isolation and control of acid-forming, toxic, or deleterious materials;
(ix) Removal or stabilization of buildings, structures and support facilities; and
(x) Post-closure management;
(4) *Monitoring Plan.* A proposed plan for monitoring the effect of your operations. You must design monitoring plans to meet the following objectives: To demonstrate compliance with the approved plan of operations and other Federal or State environmental laws and regulations, to provide early detection of potential problems, and to supply information that will assist in directing corrective actions should they become necessary. Where applicable, you must include in monitoring plans details on type and location of monitoring devices, sampling parameters and frequency, analytical methods, reporting procedures, and procedures to respond to adverse monitoring results. Monitoring plans may incorporate existing State or other Federal monitoring requirements to avoid duplication. Examples of monitoring programs which

may be necessary include surface- and ground-water quality and quantity, air quality, revegetation, stability, noise levels, and wildlife mortality; and
(5) *Interim management plan.* A plan to manage the project area during periods of temporary closure (including periods of seasonal closure) to prevent unnecessary or undue degradation. The interim management plan must include, where applicable, the following:
(i) Measures to stabilize excavations and workings;
(ii) Measures to isolate or control toxic or deleterious materials (See also the requirements in §3809.420(c)(12)(vii).);
(iii) Provisions for the storage or removal of equipment, supplies and structures;
(iv) Measures to maintain the project area in a safe and clean condition;
(v) Plans for monitoring site conditions during periods of non-operation; and
(vi) A schedule of anticipated periods of temporary closure during which you would implement the interim management plan, including provisions for notifying BLM of unplanned or extended temporary closures.
(c) In addition to the requirements of paragraph (b) of this section, BLM may require you to supply—
(1) Operational and baseline environmental information for BLM to analyze potential environmental impacts as required by the National Environmental Policy Act and to determine if your plan of operations will prevent unnecessary or undue degradation. This could include information on public and non-public lands needed to characterize the geology, paleontological resources, cave resources, hydrology, soils, vegetation, wildlife, air quality, cultural resources, and socioeconomic conditions in and around the project area, as well as information that may require you to conduct static and kinetic testing to characterize the potential for your operations to produce acid drainage or other leachate. BLM is available to advise you on the exact type of information and level of detail needed to meet these requirements; and
(2) Other information, if necessary to ensure that your operations will comply with this subpart.
(d) *Reclamation cost estimate.* At a time specified by BLM, you must submit an estimate of the cost to fully reclaim your operations as required by §3809.552. BLM will review your reclamation cost estimate and notify you of any deficiencies or additional information that must be submitted in order to determine a final reclamation cost. BLM will notify you when we have determined the final amount for which you must provide financial assurance.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

§ 3809.411 What action will BLM take when it receives my plan of operations?

(a) BLM will review your plan of operations within 30 calendar days and will notify you that—
(1) Your plan of operations is complete, that is, it meets the content requirements of §3809.401(b);
(2) Your plan does not contain a complete description of the proposed operations under §3809.401(b). BLM will identify deficiencies that you must address before BLM can continue processing your plan of operations. If necessary, BLM may repeat this process until your plan of operations is complete; or
(3) The description of the proposed operations is complete, but BLM cannot approve the plan until certain additional steps are completed, including one or more of the following:
(i) You collect adequate baseline data;
(ii) BLM completes the environmental review required under the National Environmental Policy Act;
(iii) BLM completes any consultation required under the National Historic Preservation Act, the Endangered Species Act, or the Magnuson-Stevens Fishery Conservation and Management Act;
(iv) BLM or the Department of the Interior completes other Federal responsibilities, such as Native American consultation;
(v) BLM conducts an on-site visit;
(vi) BLM completes review of public comments on the plan of operations;
(vii) For public lands where BLM does not have responsibility for managing the surface, BLM consults with the surface-managing agency;
(viii) In cases where the surface is owned by a non-Federal entity, BLM consults with the surface owner; and
(ix) BLM completes consultation with the State to ensure your operations will be consistent with State water quality requirements.
(b) Pending final approval of your plan of operations, BLM may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) Following receipt of your complete plan of operations and before BLM acts on it, we will publish a notice of the availability of the plan in either a local newspaper of general circulation or a NEPA document and will accept public comment for at least 30 calendar days on your plan of operations.
(d) Upon completion of the review of your plan of operations, including analysis under NEPA and public comment, BLM will notify you that—
(1) BLM approves your plan of operations as submitted (See part 3810, subpart 3814 of this title for specific plan-related requirements applicable to operations on Stock Raising Homestead Act lands.);
(2) BLM approves your plan of operations subject to changes or conditions that are necessary to meet the performance standards of §3809.420 and to prevent unnecessary or undue degradation. BLM may require you to incorporate into your plan of operations other agency permits, final approved engineering designs and plans, or other conditions of approval from the review of the plan of operations filed under §3809.401(b); or
(3) BLM disapproves, or is withholding approval of your plan of operations because the plan:
(i) Does not meet the applicable content requirements of §3809.401;
(ii) Proposes operations that are in an area segregated or withdrawn from the operation of the mining laws, unless the requirements of §3809.100 are met; or
(iii) Proposes operations that would result in unnecessary or undue degradation of public lands.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

§ 3809.412 When may I operate under a plan of operations?

You must not begin operations until BLM approves your plan of operations and you provide the financial guarantee required under §3809.551.

§ 3809.415 How do I prevent unnecessary or undue degradation while conducting operations on public lands?

You prevent unnecessary or undue degradation while conducting operations on public lands by—
(a) Complying with §3809.420, as applicable; the terms and conditions of your notice or approved plan of operations; and other Federal and State laws related to environmental protection and protection of cultural resources;
(b) Assuring that your operations are "reasonably incident" to prospecting, mining, or processing operations and uses as defined in §3715.0–5 of this title; and
(c) Attaining the stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54861, Oct. 30, 2001]

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:
(a) *General performance standards* —(1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart.
(2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.
(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.
(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.
(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further.
(6) *Compliance with other laws.* You must conduct all operations in a manner that complies with all pertinent Federal and state laws.
(b) *Specific standards* —(1) *Access routes.* Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill. When the construction of access routes involves slopes that require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate

location of the access route prior to commencing operations. An operator is entitled to access to his operations consistent with provisions of the mining laws. Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(2) *Mining wastes.* All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state Laws.

(3) *Reclamation.* (i) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(ii) Reclamation shall include, but shall not be limited to:

(A) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(B) Measures to control erosion, landslides, and water runoff;

(C) Measures to isolate, remove, or control toxic materials;

(D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(E) Rehabilitation of fisheries and wildlife habitat.

(iii) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(4) *Air quality.* All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(5) *Water quality.* All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(6) *Solid wastes.* All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(7) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(8) *Cultural and paleontological resources.* (i) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(ii) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(iii) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(9) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

(10) *Fire.* The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

(11) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:
(i) You must handle, place, or treat potentially acid-forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);
(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and
(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.
(12) *Leaching operations and impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.
(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.
(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and draindown from heaps during power outages in the design.
(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.
(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.
(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.
(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.
(13) *Maintenance and public safety.* During all operations, the operator shall maintain his or her structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.
[66 FR 54861, Oct. 30, 2001]

§ 3809.421 Enforcement of performance standards.

Failure of the operator to prevent unnecessary or undue degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement as described in §§3809.600 through 3809. 605 of this subpart.

[66 FR 54862, Oct. 30, 2001]

§ 3809.423 How long does my plan of operations remain in effect?

Your plan of operations remains in effect as long as you are conducting operations, unless BLM suspends or revokes your plan of operations for failure to comply with this subpart.

§ 3809.424 What are my obligations if I stop conducting operations?

(a) To see what you must do if you stop conducting operations, follow this table:

If—	Then—
(1) You stop conducting operations for any period of time	(1) You must follow your approved interim management plan submitted under §3809.401(b)(5); (ii) You must submit a modification to your interim management plan to BLM within 30 calendar days if it does not cover the circumstances of your temporary closure per §3809.431(a); (iii) You must take all necessary actions to assure that unnecessary or undue degradation does not occur; and (iv) You must maintain an adequate financial guarantee.
(2) The period of non-operation is likely to cause unnecessary or undue degradation	The BLM will require you to take all necessary actions to assure that unnecessary or undue degradation does not occur, including requiring you, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment, and other facilities and reclaim the project area.
(3) Your operations are inactive for 5 consecutive years	BLM will review your operations and determine whether BLM should terminate your plan of operations and direct final reclamation and closure.
(4) BLM determines that you abandoned your operations	BLM may initiate forfeiture under §3809.595. If the amount of the financial guarantee is inadequate to cover the costs of reclamation, BLM may complete the reclamation, and the operator and all other responsible persons are liable for the costs of such reclamation. See §3809.336(a) for indicators of abandonment.

(b) Your reclamation and closure obligations continue until satisfied.

Modifications of Plans of Operations

§ 3809.430 May I modify my plan of operations?

Yes, you may request a modification of the plan at any time during operations under an approved plan of operations.

§ 3809.431 When must I modify my plan of operations?

You must modify your plan of operations when any of the following apply:
(a) Before making any changes to the operations described in your approved plan of operations;
(b) When BLM requires you to do so to prevent unnecessary or undue degradation; and
(c) Before final closure, to address impacts from unanticipated events or conditions or newly discovered circumstances or information, including the following:
(1) Development of acid or toxic drainage;
(2) Loss of surface springs or water supplies;
(3) The need for long-term water treatment and site maintenance;
(4) Repair of reclamation failures;
(5) Plans for assuring the adequacy of containment structures and the integrity of closed waste units;
(6) Providing for post-closure management; and
(7) Eliminating hazards to public safety.

§ 3809.432 What process will BLM follow in reviewing a modification of my plan of operations?

(a) BLM will review and approve a modification of your plan of operations in the same manner as it reviewed and approved your initial plan under §§3809.401 through 3809.420; or

(b) BLM will accept a minor modification without formal approval if it is consistent with the approved plan of operations and does not constitute a substantive change that requires additional analysis under the National Environmental Policy Act.

§ 3809.433 Does this subpart apply to a new modification of my plan of operations?

To see how this subpart applies to a modification of your plan of operations that you submit to BLM after January 20, 2001, refer to the following table.

If you have an approved plan of operations on January 20, 2001	Then—
(a) *New facility.* You subsequently propose to modify your plan of operations by constructing a new facility, such as waste rock repository, leach pad, impoundment, drill site, or road	The plan contents requirements (§3809.401) and performance standards (§3809.420) of this subpart apply to the new facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.
(b) *Existing facility.* You subsequently propose to modify your plan of operations by modifying an existing facility, such as expansion of a waste rock repository, leach pad, or impoundment; layback of a mine pit; or widening of a road	The plan contents requirements (§3809.401) and performance standards (§3809.420) of this subpart apply to the modified portion of the facility, unless you demonstrate to BLM's satisfaction it is not practical to apply them for economic environmental, safety, or technical reasons. If you make the demonstration, the plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before January 20, 2001 apply to your modified facility. (See 43 CFR parts 1000–end, revised as of Oct. 1, 2000.)

§ 3809.434 How does this subpart apply to pending modifications for new or existing facilities?

(a) This subpart applies to modifications pending before BLM on January 20, 2001 to construct a new facility, such as a waste rock repository, leach pad, drill site, or access road; or to modify an existing mine facility such as expansion of a waste rock repository or leach pad.
(b) All provisions of this subpart, except plan content (§3809.401) and performance standards (§§3809.415 and 3809.420) apply to any modification of a plan of operations that was pending on January 20, 2001. See §3809.505 for applicability of financial guarantee requirements.
(c) If your unapproved modification of a plan of operations is pending on January 20, 2001, then the plan content requirements (§3809.1–5) and the performance standards (§§3809.1–3(d) and 3809.2–2) that were in effect immediately before January 20, 2001 apply to your modification of a plan of operations. (See 43 CFR parts 1000–end, revised as of Oct. 1, 2000).
(d) If you want this subpart to apply to your pending modification of a plan of operations, where not otherwise required, you may choose to have this subpart apply.

Financial Guarantee Requirements—General

§ 3809.500 In general, what are BLM's financial guarantee requirements?

To see generally what BLM's financial guarantee requirements are, follow this table:

If—	Then—
(a) Your operations constitute casual use,	You do not have to provide any financial guarantee.
(b) You conduct operations under a notice or a plan of operations	You must provide BLM or the State a financial guarantee that meets the requirements of this subpart before starting operations operations. For more information, see §§3809.551 through under a 3809.573.

§ 3809.503 When must I provide a financial guarantee for my notice-level operations?

To see how this subpart applies to your notice, follow this table:

If—	Then—
(a) Your notice was on file with BLM on January 20, 2001	You do not need to provide a financial guarantee unless you modify the notice or extend the notice under §3809.333.
(b) Your notice was on file with BLM before January 20, 2001 and you choose to modify your notice as required by this subpart on or after that date	You must provide a financial guarantee before you can begin operations under the modified notice. If you modify your notice, you must post a finacial guarantee for the entire notice.
(c) You file a new notice on or after January 20, 2001	You must provide a financial guarantee before you can begin operations under the notice.

§ 3809.505 How do the financial guarantee requirements of this subpart apply to my existing plan of operations?

For each plan of operations approved before January 20, 2001, for which you or your predecessor in interest posted a financial guarantee under the regulations in force before that date, you must post a financial guarantee according to the requirements of this subpart no later than November 20, 2001, at the local BLM office with jurisdiction over the lands involved. You do not need to post a new financial guarantee if your existing financial guarantee satisfies this subpart. If you are conducting operations under a plan of operations approved before January 20, 2001, but you have not provided a financial guarantee, you must post a financial guarantee under §3809.551 by September 13, 2001.

[66 FR 32575, June 15, 2001]

§ 3809.551 What are my choices for providing BLM with a financial guarantee?

You must provide BLM with a financial guarantee using any of the 3 options in the following table:

If—	Then—
(a) You have only one notice or plan of operations, or wish to provide a financial	You may provide an individual financial guarantee that covers only the cost of reclaiming areas disturbed under the single notice or plan

guarantee for a single notice or plan of operations	of operations. See §§3809.552 through 3809.556 for more information.
(b) You are currently operating under more than one notice or plan of operations	You may provide a blanket financial guarantee covering statewide or nationwide operations. See §3809.560 for more information.
(c) You do not choose one of the options in paragraphs (a) and (b) of this section	You may provide evidence of an existing financial guarantee under State law or regulations. See §§3809.570 through 3809.573 for more information.

Individual Financial Guarantee

§ 3809.552 What must my individual financial guarantee cover?

(a) If you conduct operations under a notice or a plan of operations and you provide an individual financial guarantee, it must cover the estimated cost as if BLM were to contract with a third party to reclaim your operations according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal and State environmental standards. The financial guarantee must also cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while third-party contracts are developed and executed.
(b) BLM will periodically review the estimated cost of reclamation and the adequacy of any funding mechanism established under paragraph (c) of this section and require increased coverage, if necessary.
(c) When BLM identifies a need for it, you must establish a trust fund or other funding mechanism available to BLM to ensure the continuation of long-term treatment to achieve water quality standards and for other long term, post-mining maintenance requirements. The funding must be adequate to provide for construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. BLM may identify the need for a trust fund or other funding mechanism during plan review or later.

§ 3809.553 May I post a financial guarantee for a part of my operations?

(a) Yes, BLM may authorize you to provide a financial guarantee covering a part of your operations if—
(1) Your operations do not go beyond what is specifically covered by the partial financial guarantee; and
(2) The partial financial guarantee covers all reclamation costs within the incremental area of operations.
(b) BLM will review the amount and terms of the financial guarantee for each increment of your operations at least annually.

§ 3809.554 How do I estimate the cost to reclaim my operations?

(a) You must estimate the cost to reclaim your operations as if BLM were hiring a third-party contractor to perform reclamation of your operations after you have vacated the project area. Your estimate must include BLM's cost to administer the reclamation contract. Contact BLM to obtain this administrative cost information.
(b) Your estimate of the cost to reclaim your operations must be acceptable to BLM.

§ 3809.555 What forms of individual financial guarantee are acceptable to BLM?

You may use any of the following instruments for an individual financial guarantee, provided that the BLM State Director has determined that it is an acceptable financial instrument within the State where the operations are proposed:

(a) Surety bonds that meet the requirements of Treasury Department Circular 570, including surety bonds arranged or paid for by third parties;
(b) 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 BLM;
(c) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States;
(d) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation; and
(e) Either of the following instruments 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 BLM:
(1) Negotiable United States Government, State and Municipal securities or bonds; or
(2) 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.
(f) Insurance, if its form and function is such that the funding or enforceable pledges of funding are used to guarantee performance of regulatory obligations in the event of default on such obligations by the operator. Insurance must have an A.M. Best rating of "superior" or an equivalent rating from a nationally recognized insurance rating service.

§ 3809.556 What special requirements apply to financial guarantees described in §3809.555(e)?

(a) If you choose to use the instruments permitted under §3809.555(e) in satisfaction of financial guarantee requirements, you must provide BLM, before you begin operations and by the end of each 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.
(b) You must review the market value of the account instruments by 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, you must, within 10 calendar days after its annual review or at any time upon the written request of BLM, provide additional instruments, as defined in §3809.555(e), 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. You must send a certified statement to BLM within 45 calendar days thereafter describing your actions to raise the market value of its account instruments to the required dollar amount of the financial guarantee. You must include copies of any statements or reports furnished by the brokerage firm to you documenting such an increase.
(c) If your review under paragraph (b) of this section demonstrates that the total market value of trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, you may ask BLM to authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee. BLM will approve your request only if you are in compliance with the terms and conditions of your notice or approved plan of operations.

Blanket Financial Guarantee

§ 3809.560 Under what circumstances may I provide a blanket financial guarantee?

(a) If you have more than one notice- or plan-level operation underway, you may provide a blanket financial guarantee covering statewide or nationwide operations instead of individual financial guarantees for each operation.
(b) BLM will accept a blanket financial guarantee if we determine that its terms and conditions are sufficient to comply with the regulations of this subpart.

State-Approved Financial Guarantee

§ 3809.570 Under what circumstances may I provide a State-approved financial guarantee?

When you provide evidence of an existing financial guarantee under State law or regulations that covers your operations, you are not required to provide a separate financial guarantee under this subpart if—
(a) The existing financial guarantee is redeemable by the Secretary, acting by and through BLM;
(b) It is held or approved by a State agency for the same operations covered by your notice(s) or plan(s) of operations; and
(c) It provides at least the same amount of financial guarantee as required by this subpart.

§ 3809.571 What forms of State-approved financial guarantee are acceptable to BLM?

You may provide a State-approved financial guarantee in any of the following forms, subject to the conditions in §§3809.570 and 3809.574:
(a) The kinds of individual financial guarantees specified under §3809.555;
(b) Participation in a State bond pool, if—
(1) The State agrees that, upon BLM's request, the State will use part of the pool to meet reclamation obligations on public lands; and
(2) The BLM State Director determines that the State bond pool provides the equivalent level of protection as that required by this subpart; or
(c) A corporate guarantee that existed on January 20, 2001, subject to the restrictions on corporate guarantees in §3809.574.

§ 3809.572 What happens if BLM rejects a financial instrument in my State-approved financial guarantee?

If BLM rejects a submitted financial instrument in an existing State-approved financial guarantee, BLM will notify you and the State in writing, with a complete explanation of the reasons for the rejection within 30 calendar days of BLM's receipt of the evidence of State-approved financial guarantee. You must provide BLM with a financial guarantee acceptable under this subpart at least equal to the amount of the rejected financial instrument.

§ 3809.573 What happens if the State makes a demand against my financial guarantee?

When the State makes a demand against your financial guarantee, thereby reducing the available balance, you must do both of the following:
(a) Notify BLM within 15 calendar days; and
(b) Replace or augment the financial guarantee within 30 calendar days if the available balance is insufficient to cover the remaining reclamation cost.

§ 3809.574 What happens if I have an existing corporate guarantee?

(a) If you have an existing corporate guarantee on January 20, 2001 that applies to public lands under an approved BLM and State agreement, your corporate guarantee will continue in effect. BLM will not accept any new corporate guarantees or increases to existing corporate guarantees. You may not transfer your existing corporate guarantee to another operator.
(b) If the State revises existing corporate guarantee criteria or requirements that apply to a corporate guarantee existing on January 20, 2001, the BLM State Director will review the revisions to ensure that adequate financial coverage continues. If the BLM State Director determines it is in the public interest to do so, the State Director may terminate a revised corporate guarantee and require an acceptable replacement financial guarantee after due notice and a reasonable time to obtain a replacement.

Modification or Replacement of a Financial Guarantee

§ 3809.580 What happens if I modify my notice or approved plan of operations?

(a) If you modify a notice or an approved plan of operations under §3809.331 or §3809.431 respectively, and your estimated reclamation cost increases, you must increase the amount of the financial guarantee to cover any estimated additional cost of reclamation and long-term treatment in compliance with §3809.552.

(b) If you modify a notice or an approved plan of operations under §3809.331 or §3809.431 respectively, and your estimated reclamation cost decreases, you may request BLM decrease the amount of the financial guarantee for your operations.

§ 3809.581 Will BLM accept a replacement financial instrument?

(a) Yes, if you or a new operator have an approved financial guarantee, you may request BLM to accept a replacement financial instrument at any time after the approval of an initial instrument. BLM will 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 calendar days of the offering.
(b) A surety is not released from an obligation that accrued while the surety bond was in effect unless the replacement financial guarantee covers such obligations to BLM's satisfaction.

§ 3809.582 How long must I maintain my financial guarantee?

You must maintain your financial guarantee until you or a new operator replace it with another adequate financial guarantee, subject to BLM's written concurrence, or until BLM releases the requirement to maintain your financial guarantee after you have completed reclamation of your operation according to the requirements of §3809.320 (for notices), including any measures identified as the result of consultation with BLM under §3809.313, or §3809.420 (for plans of operations).

Release of Financial Guarantee

§ 3809.590 When will BLM release or reduce the financial guarantee for my notice or plan of operations?

(a) When you (the mining claimant or operator) have completed all or any portion of the reclamation of your operations in accordance with your notice or approved plan of operations, you may notify BLM that the reclamation has occurred and request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both.
(b) BLM will then promptly inspect the reclaimed area. We encourage you to accompany the BLM inspector.
(c) For your plan of operations, BLM will either post in the local BLM office or publish notice of final financial guarantee release in a local newspaper of general circulation and accept comments for 30 calendar days. Subsequently, BLM will notify you, in writing, whether you may reduce the financial guarantee under §3809.591, or the reclamation is acceptable, or both.

§ 3809.591 What are the limitations on the amount by which BLM may reduce my financial guarantee?

(a) This section applies to your financial guarantee, but not to any funding mechanism established under §3809.552(c) to pay for long-term treatment of effluent or site maintenance. Calculation of bond percentages in paragraphs (b) and (c) of this section does not include any funds held in that kind of funding mechanism.
(b) BLM may release up to 60 percent of your financial guarantee for a portion of your project area when BLM determines that you have successfully completed backfilling; regrading; establishment of drainage control; and stabilization and detoxification of leaching solutions, heaps, tailings, and similar facilities on that portion of the project area.
(c) BLM may release the remainder of your financial guarantee for the same portion of the project area when—
(1) BLM determines that you have successfully completed reclamation, including revegetating the area disturbed by operations; and
(2) Any effluent discharged from the area has met applicable effluent limitations and water quality standards for one year without needing additional treatment, or you have established a funding mechanism under §3809.552(c) to pay for long-term treatment, and any effluent discharged from the area

has met applicable effluent limitations and water quality standards water for one year with or without treatment.

§ 3809.592 Does release of my financial guarantee relieve me of all responsibility for my project area?

(a) Release of your financial guarantee under this subpart does not release you (the mining claimant or operator) from responsibility for reclamation of your operations should reclamation fail to meet the standards of this subpart.
(b) Any release of your financial guarantee under this subpart does not release or waive any claim BLM or other persons 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 regulations.

§ 3809.593 What happens to my financial guarantee if I transfer my operations?

You remain responsible for obligations or conditions created while you conducted operations unless a transferee accepts responsibility under §3809.116, and BLM accepts an adequate replacement financial guarantee. Therefore, your financial guarantee must remain in effect until BLM determines that you are no longer responsible for all or part of the operation. BLM can release your financial guarantee on an incremental basis. The new operator must provide a financial guarantee before BLM will allow the new operator to conduct operations.

§ 3809.594 What happens to my financial guarantee when my mining claim or millsite is patented?

(a) When your mining claim or millsite is patented, BLM will release the portion of the financial guarantee that applies to operations within the boundaries of the patented land. This paragraph does not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area.
(b) BLM will release the remainder of the financial guarantee, including the portion covering approved access outside the boundaries of the mining claim, when you have completed reclamation to the standards of this subpart.

Forfeiture of Financial Guarantee

§ 3809.595 When may BLM initiate forfeiture of my financial guarantee?

BLM may initiate forfeiture of all or part of your financial guarantee for any project area or portion of a project area if—
(a) You (the operator or mining claimant) refuse or are unable to conduct reclamation as provided in the reclamation measures incorporated into your notice or approved plan of operations or the regulations in this subpart;
(b) You fail to meet the terms of your notice or your approved plan of operations; or
(c) You default on any of the conditions under which you obtained the financial guarantee.

§ 3809.596 How does BLM initiate forfeiture of my financial guarantee?

When BLM decides to require the forfeiture of all or part of your financial guarantee, BLM will notify you (the operator or mining claimant) by certified mail, return receipt requested; the surety on the financial guarantee, if any; and the State agency holding the financial guarantee, if any, informing you and them of the following:
(a) BLM's decision to require the forfeiture of all or part of the financial guarantee;
(b) The reasons for the forfeiture;
(c) The amount that you will forfeit based on the estimated total cost of achieving the reclamation plan requirements for the project area or portion of the project area affected, including BLM's administrative costs; and

(d) How you may avoid forfeiture, including—
(1) Providing a written agreement under which you or another person will perform reclamation operations in accordance with a compliance schedule which meets the conditions of your notice or your approved plan of operations and the reclamation plan, and a demonstration that such other person has the ability to satisfy the conditions; and
(2) Obtaining written permission from BLM for 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 your notice or approved plan of operations.

§ 3809.597 What if I do not comply with BLM's forfeiture decision?

If you fail to meet the requirements of BLM's forfeiture decision provided under §3809.596, and you fail to appeal the forfeiture decision under §§3809.800 to 3809.807, or the Interior Board of Land Appeals does not grant a stay under 43 CFR 4.321, or the decision appealed is affirmed, BLM will—
(a) Immediately collect the forfeited amount as provided by applicable laws for the collection of defaulted financial guarantees, other debts, or State bond pools; and
(b) 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 financial guarantee coverage applies.

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are liable for the remaining costs as set forth in §3809.116. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

[66 FR 54862, Oct. 30, 2001]

§ 3809.599 What if the amount forfeited exceeds the cost of reclamation?

If the amount of financial guarantee forfeited is more than the amount necessary to complete reclamation, BLM will return the unused funds within a reasonable amount of time to the party from whom they were collected.

Inspection and Enforcement

§ 3809.600 With what frequency will BLM inspect my operations?

(a) At any time, BLM may inspect your operations, including all structures, equipment, workings, and uses located on the public lands. The inspection may include verification that your operations comply with this subpart. See §3715.7 of this title for special provisions governing inspection of the inside of structures used solely for residential purposes.
(b) At least 4 times each year, BLM will inspect your operations if you use cyanide or other leachate or where there is significant potential for acid drainage.

§ 3809.601 What types of enforcement action may BLM take if I do not meet the requirements of this subpart?

BLM may issue various types of enforcement orders, including the following:
(a) *Noncompliance order.* If your operations do not comply with any provision of your notice, plan of operations, or requirement of this subpart, BLM may issue you a noncompliance order; and
(b) *Suspension orders.* (1) BLM may order a suspension of all or any part of your operations after—
(i) You fail to timely comply with a noncompliance order for a significant violation issued under paragraph (a) of this section. A significant violation is one that causes or may result in environmental or other harm or danger or that substantially deviates from the complete notice or approved plan of operations;
(ii) BLM notifies you of its intent to issue a suspension order; and

(iii) BLM provides you an opportunity for an informal hearing before the BLM State Director to object to a suspension.
(2) BLM may order an immediate, temporary suspension of all or any part of your operations without issuing a noncompliance order, notifying you in advance, or providing you an opportunity for an informal hearing if—
(i) You do not comply with any provision of your notice, plan of operations, or this subpart; and
(ii) An immediate, temporary suspension is necessary to protect health, safety, or the environment from imminent danger or harm. BLM may presume that an immediate suspension is necessary if you conduct plan-level operations without an approved plan of operations or conduct notice-level operations without submitting a complete notice.
(3) BLM will terminate a suspension order under paragraph (b)(1) or (b)(2) of this section when BLM determines you have corrected the violation.
(c) *Contents of enforcement orders.* Enforcement orders will specify—
(1) How you are failing or have failed to comply with the requirements of this subpart;
(2) The portions of your operations, if any, that you must cease or suspend;
(3) The actions you must take to correct the noncompliance and the time, not to exceed 30 calendar days, within which you must start corrective action; and
(4) The time within which you must complete corrective action.

§ 3809.602 Can BLM revoke my plan of operations or nullify my notice?

(a) BLM may revoke your plan of operations or nullify your notice upon finding that—
(1) A violation exists of any provision of your notice, plan of operation, or this subpart, and you have failed to correct the violation within the time specified in the enforcement order issued under §3809.601; or
(2) a pattern of violations exists at your operations.
(b) The finding is not effective until BLM notifies you of its intent to revoke your plan or nullify your notice, and BLM provides you an opportunity for an informal hearing before the BLM State Director.
(c) If BLM nullifies your notice or revokes your plan of operations, you must not conduct operations on the public lands in the project area, except for reclamation and other measures specified by BLM.

§ 3809.603 How does BLM serve me with an enforcement action?

(a) BLM will serve a noncompliance order, a notification of intent to issue a suspension order, a suspension order, or other enforcement order on the person to whom it is directed or his or her designated agent, either by—
(1) Sending a copy of the notification or order by certified mail or by hand to the operator or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service is complete upon offer of the notification or order or of the certified mail and is not incomplete because of refusal to accept; or
(2) Offering a copy at the project area to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the project area, BLM may offer a copy to any individual at the project area who appears to be an employee or agent of the person to whom the notification or order is issued. Service is complete when the notice or order is offered and is not incomplete because of refusal to accept. Following service at the project area, BLM will send an information copy by certified mail to the operator or the operator's designated agent.
(b) BLM may serve a mining claimant in the same manner an operator is served under paragraph (a)(1) of this section.
(c) The mining claimant or operator may designate an agent for service of notifications and orders. You must provide the designation in writing to the local BLM field office having jurisdiction over the lands involved.

§ 3809.604 What happens if I do not comply with a BLM order?

(a) If you do not comply with a BLM order issued under §§3809.601 or 3809.602, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce its order, prevent you from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts. This relief may be in addition to

the enforcement actions described in §§3809.601 and 3809.602 and the penalties described in §3809.700.
(b) If you fail to timely comply with a noncompliance order issued under §3809.601(a), and remain in noncompliance, BLM may order you to submit plans of operations under §3809.401 for current and future notice-level operations.
[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54862, Oct. 30, 2001]

§ 3809.605 What are prohibited acts under this subpart?

Prohibited acts include, but are not limited to, the following:
(a) Causing any unnecessary or undue degradation;
(b) Beginning any operations, other than casual use, before you file a notice as required by §3809.21 or receive an approved plan of operations as required by §3809.412;
(c) Conducting any operations outside the scope of your notice or approved plan of operations;
(d) Beginning operations prior to providing a financial guarantee that meets the requirements of this subpart;
(e) Failing to meet the requirements of this subpart when you stop conducting operations under a notice (§3809.334), when your notice expires (§3809.335), or when you stop conducting operations under an approved plan of operations (§3809.424);
(f) Failing to comply with any applicable performance standards in §3809.420;
(g) Failing to comply with any enforcement actions provided for in §3809.601; or
(h) Abandoning any operation prior to complying with any reclamation required by this subpart or any order provided for in §3809.601.

Penalties

§ 3809.700 What criminal penalties apply to violations of this subpart?

The criminal penalties established by statute for individuals and organizations are as follows:
(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense; and
(b) *Organizations.* If an organization or corporation knowingly and willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will 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.

§ 3809.701 What happens if I make false statements to BLM?

Under Federal statute (18 U.S.C. 1001), you are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. If you are convicted, you will be subject to a fine of not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571 or imprisonment for not more than 5 years, or both.

Appeals

§ 3809.800 Who may appeal BLM decisions under this subpart?

(a) A party adversely affected by a decision under this subpart may ask the State Director of the appropriate BLM State Office to review the decision.
(b) An adversely affected party may bypass State Director review and directly appeal a BLM decision under this subpart to the Office of Hearings and Appeals (OHA) under part 4 of this title. See §3809.801.

§ 3809.801 When may I file an appeal of the BLM decision with OHA?

(a) If you intend to appeal a BLM decision under this subpart, use the following table to see when you must file a notice of appeal with OHA:

If—	And—	Then if you intend to appeal, you must file a notice of appeal with OHA—
(1) You do not request State Director review		Within 30 calendar days after the date you receive the original decision.
(2) You request State Director review	The State Director does not accept your request for review	On the original decision within 30 calendar days of the date you receive the State Director's decision not to review.
(3) You request State Director review	The State Director has accepted your request for review, but has not made a decision on the merits of the appeal	On the original decision before the State Director issues a decision.
(4) You request State Director review	The State Director makes a decision on the merits of the appeal	On the State Director's decision within 30 calendar days of the date you receive, or are notified of, the State Director's decision.

(b) In order for OHA to consider your appeal of a decision, you must file a notice of appeal in writing with the BLM office where the decision was made.

§ 3809.802 What must I include in my appeal to OHA?

(a) Your written appeal must contain:
(1) Your name and address; and
(2) The BLM serial number of the notice or plan of operations that is the subject of the appeal.
(b) You must submit a statement of your reasons for the appeal and any arguments you wish to present that would justify reversal or modification of the decision within the time frame specified in part 4 of this chapter (usually within 30 calendar days after filing your appeal).

§ 3809.803 Will the BLM decision go into effect during an appeal to OHA?

All decisions under this subpart go into effect immediately and remain in effect while appeals are pending before OHA unless OHA grants a stay under §4.21(b) of this title.

§ 3809.804 When may I ask the BLM State Director to review a BLM decision?

The State Director must receive your request for State Director review no later than 30 calendar days after you receive or are notified of the BLM decision you seek to have reviewed.

§ 3809.805 What must I send BLM to request State Director review?

(a) Your request for State Director review must be a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support your written statement. Mark your envelope "State Director Review." You must also provide a telephone or fax number for the State Director to contact you.
(b) When you submit your request for State Director review, you may also request a meeting with the State Director. The State Director will notify you as soon as possible if he or she can accommodate your meeting request.

§ 3809.806 Will the State Director review the original BLM decision if I request State Director review?

(a) The State Director may accept your request and review a decision made under this subpart. The State director will decide within 21 days of a timely filed request whether to accept your request and review the original BLM decision. If the State Director does not make a decision within 21 days on whether to accept your request for review, you should consider your request for State Director review declined, and you may appeal the original BLM decision to OHA.
(b) The State Director will not begin a review and will end an ongoing review if you or another affected party files an appeal of the original BLM decision with OHA under section §3809.801 before the State Director issues a decision under this subpart, unless OHA agrees to defer consideration of the appeal pending a State Director decision.
(c) If you file an appeal with OHA after requesting State Director review, you must notify the State Director who, after receiving your notice, may request OHA to defer considering the appeal.
(d) If you fail to notify the State Director of your appeal to OHA, any decision issued by the State Director may be voided by a subsequent OHA decision.

§ 3809.807 What happens once the State Director agrees to my request for a review of a decision?

(a) The State Director will promptly send you a written decision, which may be based on any of the following:
(1) The information you submit;
(2) The original BLM decision and any information BLM relied on for that decision;
(3) Any additional information, including information obtained from your meeting, if any, with the State Director.
(b) Any decision issued by the State Director under this subpart may affirm the original BLM decision, reverse it completely, or modify it in part. The State Director's decision may incorporate any part of the original BLM decision.
(c) If the original BLM decision was published in theFederal Register,the State Director will also publish his or her decision in theFederal Register.

§ 3809.808 How will decisions go into effect when I request State Director review?

(a) The original BLM decision remains in effect while State Director review is pending, except that the State Director may stay the decision during the pendency of his or her review.
(b) The State Director's decision will be effective immediately and remain in effect, unless a stay is granted by OHA under §4.21 of this title.

§ 3809.809 May I appeal a decision made by the State Director?

(a) An adversely affected party may appeal the State Director's decision to OHA under part 4 of this title, except that you may not appeal a denial of your request for State Director review or a denial of your request for a meeting with the State Director.
(b) Once the State Director issues a decision under this subpart, it replaces the original BLM decision, which is no longer in effect, and you may appeal only the State Director's decision.

Public Visits to Mines

§ 3809.900 Will BLM allow the public to visit mines on public lands?

(a) If requested by any member of the public, BLM may sponsor and schedule a public visit to a mine on public land once each year. The purpose of the visit is to give the public an opportunity to view the mine site and associated facilities. Visits will include surface areas and surface facilities ordinarily made available to visitors on public tours. BLM will schedule visits during normal BLM business hours at the convenience of the operator to avoid disruption of operations.

(b) Operators must allow the visit and must not exclude persons whose participation BLM authorizes. BLM may limit the size of a group for safety reasons. An operator's representative must accompany the group on the visit. Operators must make available any necessary safety training that they provide to other visitors. BLM will provide the necessary safety equipment if the operator is unable to do so.
(c) Members of the public must provide their own transportation to the mine site, unless provided by BLM. Operators don't have to provide transportation within the project area, but if they don't, they must provide access for BLM-sponsored transportation.