

Guidelines for Reviewing Reclamation Cost Estimates

BLM's Review Responsibilities

New or Modified Operation - When submitting a new Notice or Plan of Operations the operator must provide BLM with a reclamation cost estimate that meets the requirements of 43 CFR 3809.552(a) and 3809.554(a), and must be acceptable to BLM as required by 43 CFR 3809.554(b). Where an existing Notice or Plan of Operations is proposed to be modified, the operator must provide the Field Office with an estimate of the reclamation costs for all components of the existing and proposed operation that will be effected by the modification.

BLM will review the operator's reclamation cost estimate to determine if the operator has identified and incorporated all applicable reclamation and administrative costs (identified below). In performing the review of the operator's reclamation cost estimate, the responsible Field Office will notify the operator, in writing, of any deficiencies or additional information needed in order for BLM to complete the review. It is not BLM's responsibility to calculate the reclamation cost for an operator, but the Field Office, at the Field Manager's discretion, may assist the operator in identifying costs to be included in the estimate and in developing the cost estimate.

Reclamation Cost Estimate for Part of an Operation - Where the Field Manager authorizes an operator to provide BLM with a financial guarantee under 43 CFR 3809.553 that covers a part of the operation ("phased financial guarantee") the operator must prepare a reclamation cost estimate for the part of the operation to be covered by the partial financial guarantee. The reclamation cost estimate for part of the operation must conform to the same standards as the reclamation cost estimate for the entire operation. In addition to the reclamation cost estimate for a part of the operation, the operator must also prepare a separate reclamation cost estimate for all operations proposed in the Plan of Operations on public lands. The Field Manager's decision on the amount of the required financial guarantee will identify both the total and partial cost estimates. The amount of the required financial guarantee will be based on the reclamation cost estimate for the part of the operation where the authorized incremental operations are to occur.

Long-Term Funding Mechanisms - When a trust fund or other funding mechanism is required under 43 CFR 3809.552(c), the operator must provide the Field Office with a cost estimate for the monitoring, construction, operation, maintenance, replacement and other activities for the required facilities, treatment or other needs documented in the Plan of Operations. The operator's estimate must project when the cost obligations will occur. For reoccurring costs, such as maintenance of a water treatment facility, the frequency, timing and duration of the obligation should be estimated for each cost component. The operator's cost estimate prepared for long-term obligations to be covered under 43 CFR 3809.552(c) should be documented separate from the reclamation cost estimate [43 CFR 3809.554(a)]. The cost estimates for the long-term post-reclamation obligations must be reviewed by the Field Manager in the same manner and with the same degree of care that is used in estimating traditional financial guarantees for reclamation obligations.

Periodic Review - It is BLM's responsibility to conduct a periodic review of the reclamation cost estimate. As required by 43 CFR 3809.552(b) and 3809.553(b), BLM must ensure the amount of the required financial guarantee for ongoing operations continues to meet the requirements of the regulations and all reclamation requirements in the accepted Notice or approved Plan of Operations. Unless the operator is proposing a modification to the Notice or Plan, the existing reclamation cost estimate does not reflect authorized operations, or additional information is needed, BLM's review will consist of a complete evaluation and update of the operator's reclamation cost estimate on file. Where additional information is necessary to complete the review or a revised reclamation cost estimate is required, the Field Manager will direct the operator to provide that information.

Reclamation Cost Estimate Assumptions and Conditions

The reclamation cost estimate must be based on the following assumptions and conditions:

- The estimate must cover all relevant operation, maintenance and administrative costs for all reclamation identified in the filed Notice or approved Plan of Operations [43 CFR 3809.301(b), 3809.401(d) and 3809.552(a)].
- Costs must be estimated as if BLM were hiring a third party contractor to perform all required reclamation [43 CFR 3809.552(a)].
- Costs must include the use of off-site equipment as if the project area was vacated, and the estimate must include all associated mobilization and demobilization costs [43 CFR 3809.554(a)].
- The estimate must include, when applicable, all interim maintenance required to keep the area of operation in compliance with applicable safety and environmental requirements while reclamation contracts are developed and executed [43 CFR 3809.552(a)].
- The estimate must cover costs to construct and maintain any long-term treatment facilities or post-closure structures required by the filed Notice or approved Plan of Operations [43 CFR 3809.552(a)].
- Where applicable, labor costs must be based on federally mandated labor rates, as required by the Davis-Bacon Act and the Federal Acquisition Regulations (FAR) for contracts over \$2,000. If the reclamation and cost estimate is solely for the dismantling, demolition, or removal of improvements, then contracting is under the Service Contract Act and Davis-Bacon wage rates do not apply. If construction, alteration or repair of the improvements is contemplated, even if it is under a separate contract, then the Davis-Bacon wages apply. (www.access.gpo.gov/davisbacon).

Maximum Reclamation Cost - The reclamation cost estimate must reflect the maximum cost of reclamation for the proposed disturbance to be covered by the financial guarantee. The point of maximum reclamation costs is often when there is the greatest area of disturbance, greatest volume of materials needing special handling, or some other factor or combination of factors escalating the cost to reclaim. The maximum cost of reclamation is generally not at the end of the project life.

Unless the Field Manager authorizes a phased financial guarantee under 43 CFR 3809.553, the financial guarantee is for the entire life of the mine. In reviewing the operator's estimate, the BLM must make sure the reclamation cost estimate for a life-of-mine financial guarantee reflects the maximum reclamation obligation.

Inflation - Inflation can, over time, become a significant factor in the amount of the required financial guarantee. This is an especially important concern where the potential exists for a substantial time interval between the BLM's review of the reclamation cost estimate and the potential collection and use of a forfeited financial guarantee. To minimize the potential impact inflation can have on the amount of the financial guarantee needed to cover the current reclamation cost the Field Office must review on a periodic basis the reclamation cost estimates for all ongoing operations as addressed in this IM. The maximum allowable time period between reviews is discussed below (Periodic Review).

Reclamation, Closure, Mitigation and Monitoring

The reclamation operating and maintenance (O&M) costs reflect the direct current costs of reclamation based on the reclamation and closure measures in the Notice or approved Plan of Operations. Reclamation and closure tasks typically fall into the following categories:

- Interim Operation and Maintenance – If an operator abruptly ceases operations, immediate site operation and maintenance may be required by a third party to maintain the area of operation in compliance with applicable safety and environmental requirements. There is no preset time period for the care and maintenance of a site prior to the start of reclamation; much depends on BLM's ability to access the financial guarantee, especially in bankruptcy cases. It is a good rule-of-thumb to allow for a minimum of six months of interim O&M by a contractor. Large operations or project areas with limited seasonal access may warrant a longer time period.
- Hazardous Materials – This may include the cost of decontaminating, neutralizing, disposing, treating or isolating hazardous materials used, produced, or stored on the site. The estimated cost for handling hazardous materials should assume, unless otherwise documented, that the material is properly stored and labeled.

If upon site inspection, it is determined the operator is using, producing or storing material on site that could be hazardous, e.g. unlabeled barrels, and the BLM is unsuccessful in getting the operator to properly manage those materials (operator has failed to comply with a noncompliance order), the reclamation cost estimate must be updated to reflect the higher cost of disposing of such material. This distinction is important as the disposal of properly managed hazardous materials may be a fraction of the disposal cost for materials that are not properly stored and identified.

- Water Treatment – All necessary construction and maintenance water treatment costs needed to ensure that mine discharge or drainage will meet relevant standards must be identified in the reclamation cost estimate. The cost of long term, post-reclamation operation, maintenance, and replacement requirements may be addressed in a trust fund established under 43 CFR 3809.552(c).
- Mine Facilities – The demolition, removal and disposal of all mine facilities, immobile equipment and material from the project area must be accounted for in the reclamation cost estimate. Disposal costs for those facilities which have been approved in writing by the BLM for post-reclamation BLM use may be excluded from the reclamation cost estimate. No salvage value for structures, equipment or materials is allowed in the reclamation cost estimate.

Operable mobile equipment, e.g. trucks, dozers, etc., may be excluded from the cost estimate. If upon site inspection, it is determined the mobile equipment is inoperable and the BLM is unsuccessful in getting the operator to repair or remove the inoperable equipment from the project area (operator has failed to comply with a noncompliance order), the cost of removing and disposing of that equipment must be included in the reclamation cost estimate.

- Earthwork – Earthwork includes, but is not limited to, the cost of hauling, placement, regrading and backfilling to reclaim mine disturbances, including roads that have not been specifically identified and approved to remain open.
- Drill Hole Plugging – The cost of plugging, capping, and isolation of drill holes, including exploration, production and monitoring holes, must be addressed in the reclamation cost estimate. Specifically, care needs to be taken in determining plugging costs based upon whether drill holes encounter water, water under artesian pressure, or dry holes. Proposed plugging must meet all applicable Federal and State requirements.

Where the operator is proposing drilling, the reclamation cost estimate must include, at a minimum, the estimated cost of plugging the maximum number of drill holes that may be open at one time, or the number of drill holes at a particular phase of the exploration program. The reclamation cost estimate must never be less than the cost of plugging one drill hole for each drill rig that will be working in the project area.

Where the submitted Notice or approved Plan of Operations calls for drill holes to be plugged, but doesn't specifically require the drill holes be plugged before the drill rig has been moved from the drill pad, the reclamation cost estimate must include the plugging cost for all drill holes identified in the Notice or Plan of Operations. For all drill holes, and water, monitoring and piezometer wells scheduled to be left open, the estimated plugging cost must be included in the reclamation cost estimate. Where the approved Plan of Operations proposes mining through an area where drilling is to occur and the cost of the post-mining reclamation is included in the reclamation cost estimate, the cost estimate for plugging those drill holes is not needed.

If the State Director determines the State's plugging and financial guarantee requirements related to drill hole plugging accomplishes the same level of protection as this policy, the Field Manager may base the estimated plugging costs on the State requirements.

- Revegetation – The reclamation cost estimate must include the cost of obtaining the seed mix specified in the reclamation plan and the cost of soil preparation, such as ripping or harrowing; soil amendments, such as mulching or fertilizer; application of the seed mix; noxious weed control; and placement of tree and shrub seedlings, if required. The cost for hauling and placement of growth medium, if not addressed under earthwork, must be included.
- Mitigation – Mitigation may include avoiding, minimizing, rectifying and reducing or eliminating the impact, or compensating for the impact. The cost of any deferred mitigation the Field Office is requiring the operator to perform must be included in the reclamation cost estimate. For example, if the operator is required to develop five acres of wetlands to compensate for disturbance elsewhere on the project area, until that wetland development is completed the reclamation cost estimate must include the cost of that mitigation.
- Post-Reclamation Costs – The cost of meeting any long-term construction, operation, maintenance, or replacement of any treatment facilities and infrastructure, which are not addressed in a trust fund established by 43 CFR 3809.552(c), must be included in the reclamation cost estimate.

In estimating the cost to perform these reclamation, closure, mitigation and monitoring tasks, the operator's estimate must identify the current O&M costs relating to reclamation including:

- Equipment rental or acquisition costs,
- Equipment operation costs,
- Equipment maintenance costs,
- Cost of operating supplies,
- Labor costs for operations, maintenance and supervision,
- Site maintenance including roads, infrastructure, power lines, fences and monitoring facilities,
- Reclamation materials acquisition costs, and
- Mobilization and demobilization costs.

All line items contained in an acceptable reclamation cost estimate are not to be considered spending constraints should a financial guarantee be forfeited. The line items listed are solely for the purpose of arriving at a total financial guarantee amount. This total amount may be spent however the BLM deems necessary to implement the reclamation plan. Care should be exercised so that decisions on the amount of the financial guarantee correctly reflect this policy.

Information sources that may be useful in conducting a cost analysis include: applicable parts of the Office of Surface Mining's Handbook for Calculation of Reclamation Bond Amounts (<http://www.wrcc.osmre.gov/>), BLM's Solid Minerals Reclamation Handbook H-3042-1, the Caterpillar Performance Handbook, Western Mine Engineering, Inc. (use for operator estimates only-does not consider third party contract estimates), R.S. Means Site Work Cost Data, Dataquest (equipment operating and owning costs), Rental Rate Blue Book for Construction Equipment, and Skills & Knowledge of Cost Engineering. The user of these references needs to be cognizant of how the data may be applied. The reclamation cost estimate must reflect BLM's cost to contract to have the work performed; owner/operator cost data does not reflect BLM's contracting cost.

BLM Administrative Costs

The Field Office must ensure the cost of reclamation is estimated as if BLM were hiring a contractor to perform all required reclamation. This will include costs that the operator does not normally encounter. The BLM reviewer needs to pay particular attention to costing standards that are based, in part, on the Federal Acquisition Regulations. The responsible BLM specialist should coordinate with their State Office procurement analyst concerning current labor wages, contracting requirements, and advice on various types of contracts, contract language, and administration.

This guidance contains suggested percentages for some of these administrative costs. Unless otherwise noted, these percentages should be treated as rules-of-thumb and not as precise amounts specified by regulation or law. Figures or percentages, other than those listed below, should be included in a calculation if they are explicitly addressed in a Federal-State agreement regarding the financial guarantee and/or are required by Federal or State law.

Unless otherwise noted, the administrative cost categories identified below should be included in the reclamation cost estimate.

- Engineering, Design and Construction (ED&C) Plan - An ED&C plan provides the details needed for contracting the reclamation construction work. Where appropriate, the reclamation cost estimate should reflect the costs to prepare such a plan. Should the operator fail to reclaim, the BLM may need to undertake a number of tasks including:
 - Preparation of maps and plans to show the extent of required reclamation.
 - Survey of topsoil and growth medium stockpiles to determine amount of material available.
 - Sampling and analysis of waste rock, tails, heap material, surface and ground water, etc.
 - Sampling and analysis of topsoil, growth medium and waste piles to determine whether special handling or treatment is necessary.
 - Evaluation of structures to determine requirements for demolition and removal.
 - Evaluation of storm water facilities and process solutions or water impoundments to determine if treatment, clean out, or other improvements are necessary.
 - Preparation of a supplemental environmental analysis or site studies before reclamation may commence.

Reported costs for preparation of this data collection, analysis and planning have ranged from 2 to 20 percent of the estimated reclamation O&M costs. The actual cost will depend to a great extent on the specifics, including reclamation complexities, of the proposed operation. The amount or percentage you apply should be based on available data within your State. Absent specific local or State data, we recommend the ED&C costs be estimated as 4 to 8 percent of the estimated reclamation O&M costs.

Inclusion of a line item for the development of an ED&C plan may not, however, be necessary for all operations. Specifically, small operations, such as notice-level operations, may not require the inclusion of funds to collect, analyze and develop the detailed engineering information; reclamation contracting and construction may be able to proceed without developing an ED&C plan.

- Contingency – Contingency allowance is for cost overruns that regularly occur but cannot be ascertained when an operation is being reviewed. Contingency costs generally reflect the level of detail and completeness of the cost estimate, as well as the level of uncertainty in the assumptions used for the reclamation cost estimate. With the development of an ED&C plan many of the unforeseen circumstances and costs are identified. Contingency costs do not, however, include changes in the scope or unforeseeable or unanticipated events such as earthquakes, labor strikes or floods.

Federal and State agencies that routinely prepare construction cost estimates apply contingencies, ranging from 3 to 45 percent of the O&M costs. The amount or percentage required should be based on available reclamation or construction contract information within your State. Absent reliable local or State information, we recommend the inclusion of a contingency of 4 to 10 percent of the estimated reclamation O&M costs. Where State law specifies an amount, use that figure.

Where the proposed operation involves a relatively small, uncomplicated reclamation effort, and development of an ED&C plan is not anticipated, there may not be a need to include a contingency line item. It is advisable to ensure a contingency is included for operations with estimated reclamation O&M costs over \$100,000. As with an ED&C plan, reclamation cost estimates for notice-level operations may not require the inclusion of a contingency allowance.

- Contractor Profit – Government contracts generally include a contractor profit over and above the estimated reclamation O&M costs. Reported prime contractor’s profits and overheads on existing contracts cover a wide range of values (10 to 35 percent). For financial guarantees we recommend 10 percent of the estimated O&M costs. Where State or local contract information suggests a different amount or where State law specifies an amount, use that figure. Inclusion of a line item for prime contractor’s profit may not be required if the operator incorporates the prime contractor’s profit into the O&M estimate. In such cases, the operator’s reclamation O&M estimate must document the inclusion of the prime contractor’s profit.
- Liability Insurance - The contractor’s liability insurance premium must be included in the reclamation cost estimate. If the liability insurance is included in the reclamation O&M estimate, this needs to be documented. The contractor’s liability insurance premium should be estimated as 1.5 percent of the estimated labor costs for the project and included in the reclamation cost estimate.
- Payment and Performance Bonds - Payment of premiums for both a performance bond and a payment bond as required by the Miller Act, with estimated contract costs over \$100,000, must be included in the reclamation cost estimate. A set amount equal to 3 percent of the estimated O&M costs should be used to calculate the payment of premiums for both a performance bond and a payment bond.
- BLM Contract Administration - BLM’s labor and operations costs for the Field and State Offices to administer the contract must be included in the financial guarantee. Reported contract administration costs range from 2 to 25 percent. We estimate BLM’s contract administration and inspection cost for reclamation contracts as 6 to 10 percent of the estimated O&M costs, depending on the size and complexity of the proposed operation. The actual cost will depend to a great extent on the specifics of the proposed operation, including reclamation complexities.

Where data is available, the State or Field Office should review their records to determine appropriate costs. Generally the larger the amount of the financial guarantee the lower the percentage needed for contract administration.

- **BLM Indirect Costs** - BLM's indirect costs for contract administration must be included in the amount of the required financial guarantee. The indirect cost rate is a fixed 21 percent of the estimated BLM contract administration cost; therefore the indirect costs may range from 1.26 to 2.1 percent of O&M costs (21% of the 6 - 10% contract administration costs).

If BLM is required to administer a reclamation contract under a forfeited financial guarantee, these indirect cost funds are to remain within the State where the reclamation work will be done. The funds will be available to pay for within-State indirect costs (building rental, telephone, etc.) associated with the project and any project support needed from other offices such as the Denver Service Center contract officers or inspectors.

In reviewing the operator's reclamation cost estimate, the Field Office may need to determine what administrative costs the operator has included with their reclamation O&M costs. For example, operator's labor cost estimates may include base pay, payroll loading, overhead and profit. A typical dozer operator rate in Idaho, in 2002, was \$37.59 to \$40.25 per hour. This rate included the base pay plus 14.6 percent payroll loading, 10 percent overhead, and 6 percent profit. To avoid overlooking or double counting any of the identified administrative costs, e.g. contractor profit, the operator must document what administrative costs are included in their labor costs or other O&M costs. This may be done by itemizing the cost estimates or by providing BLM with a signed statement that identifies the specific administrative costs that are included in their estimated O&M costs.

Reclamation Cost Estimating Tools

Individual BLM State Offices or Field Offices may develop their own tools to support the reclamation cost estimating process. Summary sheets, checklists, and cost models may be available to assist the operator in developing the reclamation cost estimate.

Standardized reclamation cost estimating processes, that include standardized unit costs, schedules, spreadsheets and models, are useful tools that provide simplified, efficient, defensible and consistent means of estimating reclamation costs for both Notices and Plans of Operations. Where appropriate, BLM State and Field Offices are encouraged to develop processes based on standardized unit costs to facilitate the review and approval of the operator's reclamation cost estimate. A process that uses standardized costs may be developed, based on local and/or regional costs, to reclaim typical activities, features and facilities (roads, drill pads, drill-holes, trenches, pits, structures, site stabilization, revegetation, etc.) for specific kinds of terrain (topography).

Where a standardized reclamation cost estimating process is used, the amount of a financial guarantee must be sufficient to meet the requirements of 43 CFR 3809.552(a) and 3809.554(a). The assumptions used in developing the cost inputs must be consistent with both State and Federal regulations and laws. Determining consistency with State and Federal regulations and laws goes beyond the applicable environmental requirements. The assumptions used must also be consistent with applicable contracting requirements, such as Federal Acquisition Regulations. For example, under Federal contracting we cannot require an operator to work double shifts. As such, the reclamation cost estimate should not be based on the assumption that the reclamation contractor will conduct the work using a double shift.

Periodic Review

The BLM Field Office must provide a periodic review of reclamation cost estimates for ongoing operations and issue a determination as to the amount of the required financial guarantee. Based on a complete evaluation and update of the reclamation cost estimate, the periodic review must ensure the current amount of the financial guarantee continues to meet the requirements of 43 CFR 3809.552(a), 3809.552(c) and 3809.554(a).

The following establishes the maximum time the BLM may allow to elapse between reviews. The BLM has the authority to require a more frequent review of the reclamation cost estimate at the discretion of the Field Manager.

- Reclamation cost estimates for Notice operations must be reviewed every 2 years at time of the Notice extension under 43 CFR 3809.333.
- Reclamation cost estimates for Plans of Operations must be reviewed at least every 3 years.
- Where the BLM has an agreement under 43 CFR 3809.200 with the State that requires a review more frequent than every 2 years for Notices or every 3 years for Plans of Operations, reviews must be conducted in conformance with that agreement.
- Where the Notice or Plan of Operations is modified, a review must be conducted at the time of modification. The reclamation cost estimate review must focus on how the modification affects the existing cost estimate on file. Unless the proposed modification necessitates a complete review, the entire current reclamation cost estimate does not need to be reviewed. However, a review that covers a portion of the reclamation cost estimate on file for the modified Notice or Plan does not substitute for the required 2-year review for a Notice or 3-year review for a Plan of Operations.

- Where the financial guarantee is for a part of the operation, as provided under 43 CFR 3809.553, BLM must review the reclamation cost estimate annually [43 CFR 3809.553(b)]. The Field Office will evaluate and update the reclamation cost estimate for each increment of the operations. In addition to the annual review requirement for the phased financial guarantee coverage, the Field Office must also review the reclamation cost estimate for the entire Notice every 2 years or entire Plan of Operations every 3 years as required above.
- The Field Office must conduct, at least every 3 years, a thorough review of the cost estimates and other assumptions used in determining the amount of funds needed in the long-term funding mechanism required under 43 CFR 3809.552(c). The Field Office must also monitor the growth of all trust funds. At least once a year the responsible Field Office must review the financial statements to ensure growth of the fund is keeping pace with the assumptions used to determine the amount needed in the fund.

Review Results and Decisions

The Field Manager must issue a decision that establishes the amount of the required financial guarantee. The decision must be provided to the operator following the completion of the review of the reclamation cost estimate with a copy provided to the BLM office responsible for adjudication of the financial guarantee.

Acceptable Review Results - When the Field Office has received an estimate that is acceptable, the Field Manager must provide the operator with a written decision as to the amount of the required financial guarantee. The decision must state: 1) the amount of the financial guarantee to be provided (\$0.50 or more rounded up to the nearest whole dollar and less than \$0.50 rounded down to the nearest whole dollar), and 2) the types of financial instruments that are acceptable to the BLM. The Field Manager's decision must also state that an operator may not begin operations under a new or modified Notice or Plan of Operations without first providing BLM with an acceptable financial guarantee that meets the requirements of 43 CFR 3809.551 thru 3809.572; no activity greater than casual use is authorized until the BLM has accepted and obligated the operator's financial guarantee.

Following the periodic review for an ongoing operation, the Field Manager will make a determination as to the amount of the required financial guarantee. If there is a change in the required amount of the financial guarantee or the review was conducted at the request of the operator, the Field Manager must issue a decision as to the amount of the required financial guarantee. For ongoing operations under an existing Notice and Plan, the decision must state: 1) the amount of the required financial guarantee, 2) any change (increase or decrease) in the amount of the required financial guarantee, 3) that the operator has 60 days from receipt of the decision to submit an acceptable financial guarantee if the amount has increased, and 4) that failure to provide an acceptable financial guarantee within the specified timeframe will result in an enforcement action against the operator for failure to maintain an acceptable financial guarantee.

For a Notice extension under 43 CFR 3809.333, where the amount of the required financial guarantee has increased, the decision must also state: 1) that the Notice is conditionally extended subject to meeting the financial guarantee requirements, 2) that failure to provide an acceptable financial guarantee within 60 days will result in the Notice expiring immediately upon conclusion of the timeframe, and 3) that upon expiration of the Notice, all activities, other than reclamation, are unauthorized and must cease.

Unacceptable Review Results - If the Field Office finds the operator has incorrectly calculated operating and maintenance costs, or finds that the estimate is based on out-of-date cost data that does not reflect the actual cost of reclamation, then the estimate will not be accepted. When an estimate is not acceptable, the Field Manager must notify the operator, in writing, of its unacceptability, and identify the deficiencies or errors that led to that conclusion. The BLM must advise the operator to incorporate the administrative costs outlined above if they are not included in the estimate.

Where the reclamation cost estimate for a new Notice is not acceptable to the BLM, the Notice will not be considered complete as required under 43 CFR 3809.301.

Additional Information - For ongoing operations, where the Field Office lacks the information necessary to determine the adequacy of the existing reclamation cost estimate, the Field Manager must notify the operator of the deficiencies or errors and include a due date when the information or revised reclamation cost estimate must be submitted. Failure to provide the required information within the specified timeframe will result in an enforcement action against the operator for failure to maintain an acceptable financial guarantee.

For Notices to be extended under 43 CFR 3809.333, where the Field Office lacks the information necessary to determine the adequacy of the existing reclamation cost estimate, the Field Manager must issue a decision giving the operator 30 days from receipt to provide all of the requested information. The Notice will be conditionally extended pending Field Office receipt of the required information. Failure to provide the required information within the 30-day period will result in the Notice expiring.

Appeal of Review Decisions - Decisions relating to the acceptability or unacceptability of a financial guarantee are subject to appeal under the provisions of 43 CFR 3809.800. Any adversely affected party may elect to seek a State Director Review (SDR) under 43 CFR 3809.800(a) or appeal directly to the Office of Hearings and Appeals (OHA) under 43 CFR 3809.801.

Appeal to OHA of a Field Manager's decision must be filed in the office that issued the decision. The Field Office then forwards the Notice of Appeal to OHA. Appeals must be filed by the appellant with the office that issued the decision within 30 days of receipt of the decision. Request for an SDR are filed with the office of the State Director within 30 days of the Field Manager's decision. If the review and evaluation of the financial guarantee and/or financial instrument was conducted by the State Office, a request for State Director review under 43 CFR 3809.806 may not be accepted.

Decrease the Amount - Where the existing amount of the financial guarantee exceeds the Field Manager's determination as to the amount of the required financial guarantee, the operator may request BLM decrease the amount of the required financial guarantee. Any request by the operator for a reduction in the amount of the financial guarantee must be made to the BLM office responsible for adjudicating the financial guarantee.